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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA

4 v.

11 Cr. 62 (PAC)

5 DONNA LEVY,
6 DAVID LEVY,

Jury Trial

Defendants.

7 -----x

8 New York, N.Y.
9 March 14, 2013
10 10:25 a.m.

Before:

11 HON. PAUL A. CROTTY

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

17 CARRIE H. COHEN

HOWARD S. MASTER

18 Assistant United States Attorneys

19 HOWARD M. SREBNICK

20 NOAH FOX

ALEX ARTEAGA-GOMEZ

21 Attorneys for Defendant Donna Levy

22 GERALD L. SHARGEL

23 ROSS M. KRAMER

JENNIFER HAYS

24 Attorneys for Defendant David Levy

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1 (Trial resumed; jury present)

2 BENJAMIN LEFRANCOIS, resumed.

3 THE COURT: Mr. Lefrancois, you are still under oath.

4 Mr. Shargel.

5 MR. SHARGEL: Thank you, your Honor.

6 CROSS-EXAMINATION

7 Q. Mr. Lefrancois, good morning.

8 A. Good morning.

9 Q. I have just a few more questions and then I'll sit down. I
10 would like to direct your attention to on or about March, as we
11 say, in or about March of 2011. There came a time when Mr.
12 Levy converted one of the notes, right?

13 A. Yes.

14 Q. He got unrestricted stock, free-trading stock, correct?

15 A. Yes.

16 Q. You knew following that conversion that he sold some stock,
17 right?

18 A. Yes.

19 Q. He sold stock on public markets, correct?

20 A. Yes.

21 Q. After he sold stock, and we are fixing that as March 2011,
22 after he sold the stock, did he provide any more money to the
23 company?

24 A. Yes.

25 Q. I have Defense Exhibit A712.

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Lefrancois - cross

1 MR. SHARGEL: May I approach, your Honor?

2 THE COURT: Yes, you may.

3 Q. Do you recognize that, sir?

4 A. Yes.

5 Q. What do you recognize it to be?

6 A. A promissory note.

7 Q. From David Levy? David Levy is furnishing the money, and
8 your company is the borrower?

9 A. Yes.

10 Q. That's in the amount of how many dollars?

11 A. Hundred thousand.

12 Q. Hundred thousand dollars.

13 THE COURT: Did you ask the date of that, Mr. Shargel?

14 Q. May we have the date?

15 A. March 24, 2011.

16 MR. SHARGEL: I offer it in evidence.

17 MR. MASTER: No objection.

18 THE COURT: A712 is in evidence.

19 (Defendant's Exhibit A712 received in evidence)

20 Q. Let me show you what has been marked as Defendant's Exhibit
21 A713. Do you recognize it?

22 A. Yes.

23 MR. SHARGEL: Judge, I think we can save time IF I
24 stand here. Is that all right with you?

25 THE WITNESS: Yes.

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Lefrancois - cross

1 Q. What do you recognize it to be?

2 A. A secure promissory note in the amount of \$100,000, April
3 27, 2011.

4 Q. Greenway is the borrower?

5 A. Yes.

6 Q. David Levy is the lender?

7 A. Yes.

8 Q. The date you gave us again?

9 A. April 27, 2011.

10 Q. In the amount of \$100,000?

11 A. Yes.

12 MR. SHARGEL: I offer it in evidence, your Honor, 713.

13 MS. COHEN: No objection, your Honor.

14 THE COURT: 713 is in evidence.

15 (Defendant's Exhibit A713 received in evidence)

16 Q. I put before you what marked for identification as A714.

17 Do you recognize it?

18 A. Yes.

19 Q. What do you recognize it to be?

20 A. A secured promissory note.

21 Q. Greenway borrowing money from David Levy?

22 A. Yes.

23 Q. The date?

24 A. August 16, 2011.

25 Q. In the amount of?

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Lefrancois - cross

1 A. 25,000.

2 MR. SHARGEL: I offer it into evidence.

3 MS. COHEN: No objection, your Honor.

4 THE COURT: 714 is in evidence.

5 (Defendant's Exhibit A714 received in evidence)

6 Q. Finally, I put before you what has been marked for
7 identification as Defense Exhibit A715. I ask you to look at
8 it and tell the jury if you recognize it.

9 A. Yes.

10 Q. What do you recognize it to be?

11 A. A secured promissory note.

12 Q. The date?

13 A. September 1, 2011.

14 Q. The amount?

15 A. 25,000.

16 MR. SHARGEL: I offer it into evidence.

17 MS. COHEN: No objection, your Honor.

18 THE COURT: 715 is received in evidence.

19 (Defendant's Exhibit A715 received in evidence)

20 Q. Again, it is to Greenway from David Levy?

21 A. Yes.

22 Q. David Levy providing, as he did in each of the instances
23 evidenced by the paper I put in front of you now in evidence,
24 was furnishing more money to the company, right?

25 A. Yes.

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Lefrancois - cross

1 Q. He gave to the company between March, we started this with
2 reference to March, March 24, 2011, to September 1, 2011, he
3 gave the company or provided the company with capital in the
4 amount of \$250,000, correct?

5 A. Yes.

6 Q. We had it yesterday, I'm not going into any more detail
7 about it, but shortly after that, on April 27, 2011, he gave
8 that personal advance to you, a loan in the amount of \$100,000?

9 A. Yes.

10 Q. By the way, do you know of any contract or instrument or
11 any other mechanism by which he was required to give you that
12 money?

13 A. No.

14 MR. SHARGEL: No further questions.

15 MR. SREBNICK: No questions.

16 THE COURT: Any redirect?

17 MR. MASTER: Yes, your Honor.

18 **REDIRECT EXAMINATION**

19 BY MR. MASTER:

20 Q. Mr. Shargel asked you on cross-examination whether David
21 Levy believed in the company. Do you remember that?

22 A. Yes.

23 Q. You answered the question yes, do you remember that?

24 A. Yes.

25 Q. You don't know what Mr. Levy actually believed, do you?

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Lefrancois - redirect

1 A. No.

2 Q. You were led to believe that Mr. Levy actually believed in
3 the company, isn't that right?

4 A. Yes.

5 Q. That's what Mr. Levy told you?

6 A. Yes.

7 Q. You don't know his real motives for investing in your
8 company, do you?

9 MR. SHARGEL: I object to the form of these questions.

10 THE COURT: Sustained.

11 Q. You were asked some questions about the business
12 relationship between the two of you. You asked if you believed
13 anyone was taking advantage of the other. Do you remember
14 that? You were asked on cross-examination, "No one was taking
15 advantage of the other, right?" And you said, "No." Do you
16 remember that?

17 A. No.

18 Q. Did Mr. Levy disclose to you what he was taking the company
19 public that he was acquiring 9,990,000 shares in your company
20 in the name of Bluefin Financial Group?

21 A. No.

22 Q. He kept that secret from you, didn't he?

23 MR. SHARGEL: Objection to the form of the question.

24 THE COURT: Overruled.

25 A. Yes.

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Lefrancois - redirect

1 Q. It wasn't until 2010 when he told you that he had lost a
2 certificate in the name of Bluefin Financial Group in a
3 briefcase that you learned about the existence of those shares?

4 A. Yes.

5 Q. What did he want you to do for him about those 9,990,000
6 free-trading shares in Bluefin Financial?

7 A. Replace them.

8 Q. Mr. Shargel asked you that when David Levy got to see the
9 device, he was impressed with what he saw, and you answered
10 yes?

11 A. Yes.

12 Q. He acted impressed with what he saw, right?

13 A. Yes.

14 Q. You don't know whether he actually was impressed with what
15 he saw?

16 MR. SHARGEL: Judge, I object to the form of the
17 question.

18 THE COURT: Sustained.

19 Q. Do you know what his real motives were in dealing with you?

20 A. No.

21 Q. You were asked whether Mr. Levy mentioned anywhere that he
22 wanted his name to be kept off the books, and you answered no.
23 Do you remember that?

24 A. Yes.

25 Q. What did David Levy tell you about an individual named Yael

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Lefrancois - redirect

1 Tal?

2 A. Nothing.

3 Q. What, if anything, did David Levy tell you about the
4 relationship between his company and Fitzwilliams Investments?

5 A. Nothing.

6 Q. Did David Levy ever tell you that in selling shares,
7 allegedly selling shares, from EZ English to Fitzwilliams
8 Investments, he was just transferring shares from a company he
9 controlled to another company he controlled?

10 A. No.

11 Q. Did David Levy ever tell you that he was forging signatures
12 on checks he was sending you?

13 A. No.

14 MR. SHARGEL: Judge, I object to forging signatures.
15 There is no allegation of any signature being forged on a
16 check.

17 THE COURT: The objection is overruled. It's already
18 been asked and answered.

19 Q. You were asked questions about a conversation you had with
20 David Levy about selling your own shares to address your
21 personal financial difficulties. Mr. Shargel asked you, "He
22 understood the stock market better than you, right?" And you
23 said, "Yes." Do you remember that?

24 A. Yes.

25 Q. That is correct, isn't it?

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Lefrancois - redirect

1 A. Yes.

2 Q. When David Levy told you not to sell your shares because it
3 would hurt the stock, you trusted him, right?

4 A. Yes.

5 Q. In fact, he was the person who orchestrated everything
6 related to going public in the stock?

7 A. Yes.

8 Q. How much stock did you actually want to sell at that time?

9 A. I believe it was about 1.5 million shares.

10 Q. Over what period of time?

11 A. 90 days.

12 Q. David Levy told you not to do that, because selling your
13 shares would hurt the stock?

14 A. Yes.

15 Q. At that time what, if anything, did David Levy say about
16 the amount of shares he was selling?

17 A. He didn't.

18 Q. As you were in difficult financial straits, when, if ever,
19 did David Levy disclose that he made approximately \$5.5 million
20 selling shares into the market at the time he told you that it
21 would hurt the stock for you to sell your shares?

22 A. He didn't.

23 Q. Mr. Shargel said that blogs could say whatever they want.
24 Do you remember that?

25 A. Yes.

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Lefrancois - redirect

1 Q. Blogs said that the stock was pumped and dumped, right?

2 A. Yes.

3 Q. Blogs can say whatever they want?

4 A. Yes.

5 Q. How about you? Do you believe that the stock was pumped
6 and dumped based on what you observed?

7 A. Yes.

8 Q. How did that hurt your company?

9 A. It gave us a bad reputation.

10 Q. And it gave you a bad reputation?

11 A. Yes.

12 Q. Mr. Levy never disclosed to you that he was pumping and
13 dumping your stock?

14 A. No.

15 Q. Do you believe that that helped the company or hurt the
16 company?

17 A. Hurt the company.

18 Q. How much is your stock worth now? I mean, what is the
19 share price of your stock now?

20 A. .006.

21 Q. How effective are your efforts to raise money for your
22 company now that your stock has been, as you believe, pumped
23 and dumped?

24 A. It's almost impossible.

25 Q. When you were coming back to David Levy to get \$25,000,

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Lefrancois - redirect

1 \$25,000, \$25,000, what did David Levy insist on each time that
2 you went to him?

3 A. A promissory note.

4 Q. That was a promissory note that entitled him to what in the
5 event that you didn't have the ready cash to pay him off?

6 A. Convert to stock.

7 Q. Mr. Shargel stated that "David Levy's money," asked you,
8 "that was kind of like a lifeboat in a very difficult storm,
9 right"?

10 A. Yes.

11 Q. You said, "Yes." Mr. Lefrancois, if Mr. Levy hadn't given
12 you \$25,000 here and there, what could have happened to your
13 company?

14 A. Could have went out of business.

15 Q. What would have happened to all those shares that Mr. Levy
16 held?

17 A. Would have been worthless.

18 MR. MASTER: One moment.

19 Nothing further.

20 **RECROSS-EXAMINATION**

21 THE COURT: Very briefly now, Mr. Shargel.

22 MR. SHARGEL: Yes.

23 BY MR. SHARGEL:

24 Q. Did anyone everyone ask for money back that had been
25 furnished to you? Did anyone try to void a bank transaction?

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Lefrancois - recross

1 A. No.

2 Q. Were the checks all honored by the bank? You deposited
3 those checks in a bank, didn't you?

4 A. Yes.

5 Q. You were asked the question by Mr. Master about Yael Tal,
6 correct?

7 A. Yes.

8 Q. Did you learn that Yael Tal was Mr. Levy's sister?

9 A. No.

10 Q. Did you ask him any questions about who Yael Tal was?

11 A. No.

12 Q. But these checks were negotiated in each and every instance
13 by a bank, right?

14 A. Yes.

15 Q. Each time those checks cleared and you were able to use
16 that money, right?

17 A. Yes.

18 Q. You told us yesterday there was more than \$2 million that
19 David Levy gave to you, right?

20 A. Yes.

21 Q. Then you were asked a moment ago by Mr. Master about
22 promissory notes, remember that?

23 A. Yes.

24 Q. He asked you with whether they could be converted to stock,
25 right?

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Lefrancois - recross

1 A. Yes.

2 Q. You know as a businessman that any time one lends money to
3 another, there is some form of collateral or some form of
4 support for the promise, right?

5 A. Yes.

6 Q. You have to pay it back, right?

7 A. Yes.

8 Q. You either have to pay it back in cash or you have to pay
9 back in stock, correct?

10 A. Correct.

11 Q. There is no question about that, right?

12 A. Right.

13 Q. Did you find anything unusual about it?

14 A. No.

15 Q. Did you find anything sinister or secret about it?

16 A. No.

17 Q. Didn't you do -- when I say "you," as the company -- didn't
18 you do your own promotion in 2012?

19 A. I don't know what you are referring to.

20 Q. Do you remember doing a promotion of the stock where news
21 releases started again, press releases started again in
22 supporting the stock and the stock went up somewhat?

23 A. Yes.

24 Q. That happened in 2012, when Mr. Levy wasn't furnishing any
25 more money, correct?

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Lefrancois - recross

1 A. Correct.

2 Q. After he had given you that more than \$2 million, he wanted
3 to see if the company could stand on its own, right?

4 A. Correct.

5 Q. Nevertheless, it was struggling, correct?

6 MR. MASTER: Objection.

7 THE COURT: Overruled.

8 A. Yes.

9 MR. SHARGEL: I have no further questions.

10 THE COURT: You are excused. Thank you very much.

11 MR. MASTER: Judge, I wanted to ask one question about
12 what Mr. Levy believed.

13 THE COURT: It's finished. We have had enough from
14 Mr. Lefrancois.

15 You are excused.

16 (Witness excused)

17 THE COURT: Next witness.

18 MS. COHEN: Your Honor, at this time the government
19 would like to read a stipulation into evidence and publish an
20 exhibit after it is admitted through the stipulation.

21 THE COURT: All right.

22 MS. COHEN: The stipulation has the caption of the
23 case. It is signed and entered into by the parties in this
24 case. It is marked for identification Government Exhibit S4.

25 Paragraph 1. Government Exhibit 704-1 and 704-2 are

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1 true and accurate copies of applications by Yael Levy Tal to
2 obtain a United States passport. Government Exhibit 704-1 and
3 704-2 are maintained by the United States state department in
4 the course of its regularly conducted business.

5 It is further stipulated and agreed that Government
6 Exhibits 704-1 and 704-2 may be received in evidence at trial
7 and that the stipulation may be received in evidence at trial.
8 Signed by the parties, dated March 11, 2013.

9 Your Honor, the government moves Government Exhibit S4
10 and Government Exhibits 704-1 and 704-2 into evidence.

11 THE COURT: S4 and 704-1 and 2 are received in
12 evidence.

13 (Government's Exhibits S4, 704-1, and 704-2 received
14 in evidence)

15 MS. COHEN: Your Honor, we now have an oral
16 stipulation that the parties agree that Yael Tal is David
17 Levy's sister.

18 THE COURT: All right.

19 MS. COHEN: If we can publish 704-1. And if we can
20 zoom in, please, Mr. Dinet, on the signature at the bottom
21 under the photograph.

22 And if we could publish 704-2, please, Mr. Dinet. You
23 have to go lower, at the bottom below the photo, there is a
24 signature. Thank you.

25 Now, your Honor, the government would like to read

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1 what's been marked for identification as Government Exhibit S9,
2 which is another stipulation.

3 It is hereby stipulated and agreed between the
4 parties, and it is signed by all the parties that, if called to
5 testify, a special agent of the United States Department of
6 Homeland Security Immigration and Customs Enforcement (ICE)
7 would testify as follows.

8 1. The ICE special agent queried a database
9 maintained by ICE in the course of its regularly conducted
10 business activities regarding border crossing by individuals
11 who enter or leave the United States "the database." The
12 database contains records concerning inbound and outbound
13 travel. For each border crossing the database maintains
14 records concerning departure and destination airports, dates of
15 travel, and information concerning the airlines on which the
16 individuals traveled.

17 2. The ICE special agent queried the database for
18 records concerning David Levy and Yael Levy Tal. The results
19 of that query are contained within Government Exhibits 710 and
20 711 respectively.

21 3. Government Exhibit 712 is a summary of the
22 information contained in Government Exhibit 710. Government
23 Exhibit 713 is a summary of the information contained in
24 Government Exhibit 711.

25 It is further stipulated and agreed that the

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1 Government Exhibit 710 through 713 may be received in evidence
2 at trial and that the stipulation may be received in evidence
3 at trial. Signed by all the parties, dated March 13, 2011.

4 Your Honor your Honor, the government moves Government
5 Exhibit S9 and 710 through 713 into evidence, please.

6 THE COURT: S9, 710, '11, '12, and '13 are received in
7 evidence.

8 (Government's Exhibits S9, 710, 711, 712, and 713
9 received in evidence)

10 MS. COHEN: Mr. Dinot, if you could publish 712. No,
11 713, sorry. Thank you. And if you could enlarge the top part,
12 please.

13 Your Honor, at this time the government calls Ray
14 Wyman.

15 MR. SHARGEL: Judge, before that, may we approach for
16 a moment?

17 THE COURT: Yes.

18 (Continued on next page)

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(At the side bar)

MR. SHARGEL: I am deeply disturbed by one point. The suggestion was, it was more than a suggestion, that the signature of Yael Tal was a forgery. They have never interviewed Yael Tal. They have no idea whether she gave permission to David Levy to use his corporation or to sign her name. They have no good faith basis to believe that she didn't. There is no suggestion of the idea that travel establishes.

There is no good-faith basis for them to think this is a forgery. This jury shouldn't be thinking that it is a forgery. The only evidence you have of a forgery is Mr. Master's question, nothing more on this record, and nothing more on this record is going to come in.

MR. MASTER: That is not the case, your Honor. Mr. Levy used Yael Tal's identity on various documents. He used his own identity on various documents. We are permitted to argue to the jury that these were forgeries intended to further the scheme by concealing his role in the pumping and dumping of various stocks. He used her identity, and it is clear that it is his handwriting, and it is clear from the context and circumstances that he was using it again in the name of other corporations and individuals to further the scheme.

MR. SHARGEL: It is not a forgery. There is no forgery here. I can sign my sister's signature if she gives me

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1 permission to sign her name. That's not a forgery. There is
2 nothing in this record, nothing from Mr. Master, to suggest any
3 evidentiary basis to call this a forgery.

4 THE COURT: What relief do you want?

5 MR. SHARGEL: To strike the question and answer
6 regarding forgery. There is no evidence in this record that
7 there is a forgery. A very simple instruction.

8 MS. COHEN: Your Honor, if I may. There is evidence
9 that it is not her real signature shown on her U.S. passport
10 application and there is evidence through the border crossings
11 that she was not in the United States on the times --

12 THE COURT: The point is that she could have
13 authorized him to use her signature.

14 MS. COHEN: If he wants to get on the stand and
15 testify about that, that's fine.

16 THE COURT: All right. The application is denied.

17 (Continued on next page)

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(In open court)

RAY WYMAN,

called as a witness by the government,

having been duly sworn, testified as follows:

THE COURT: Would you state your name for the record, sir.

THE WITNESS: Ray Wyman, Jr. R-A-Y, W-Y-M-A-N.

THE COURT: Please sit down, Mr. Wyman. Pull yourself up to the microphone and speak into it.

Ms. Cohen.

MS. COHEN: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. COHEN:

Q. What is your educational background?

A. I have a Bachelor's degree in journalism.

Q. Where do you live now?

A. I live in Orange, California.

Q. Where do you work?

A. I am self-employed, public relations.

Q. How long have you been self-employed doing public relations work?

A. I don't know the exact years. 1984, since 1984.

Q. What type of companies have you done public relations work for?

A. I worked for Texas Instruments, Cisco Systems, Sun

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Wyman - direct

1 Microsystems, World Trade Center Association.

2 Q. When you say public relations work, can you describe in
3 general what types of work you do regarding public relations.

4 A. I manage communications for my clients': Websites,
5 collateral material, presentations, and press releases.

6 Q. Did there come a point in time you did some work on public
7 relations for Greenway Design?

8 A. Yes.

9 Q. How did that come about?

10 A. I met Robert Jakubik. He saw my work with another client
11 and called me.

12 Q. When was this that you spoke with Mr. Jakubik about
13 possibly doing some work for Greenway Design?

14 A. Around June 2009.

15 Q. What happened?

16 A. He hired me. I did their branding and website work. I
17 started working immediately on getting materials ready to sell
18 their product.

19 Q. How did you get paid? What was your arrangement with
20 Greenway Design?

21 A. I was paid \$3,000 a month.

22 Q. Remind, who was Mr. Jakubik? What was his role at Greenway
23 Design?

24 A. He was vice president of marketing.

25 Q. When you joined Greenway Design, was it a public or private

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Wyman - direct

1 company?

2 A. It was a private company.

3 Q. At some point did Greenway Design become a public company?

4 A. Yes.

5 Q. When was that?

6 A. Early 2010.

7 Q. You started working June-July 2009?

8 A. Yes.

9 Q. What changed with respect to your work for Greenway Design
10 when the company went public in early 2010?

11 A. None.

12 Q. Did you draft and issue press releases for Greenway Design
13 when it was a private company?

14 A. Yes, I did.

15 Q. Why did you issue press releases for Greenway Design when
16 it was a private company?

17 A. To sell the product.

18 Q. Did you draft and issue press releases for Greenway Design
19 when it became a public company?

20 A. Yes, I did.

21 Q. Why did you issue press releases for Greenway Design when
22 it became a public company?

23 A. To sell the product.

24 Q. Same reason?

25 A. Yes.

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Wyman - direct

1 Q. When did you first meet David Levy?

2 A. That would have been summer of 2010.

3 Q. How did that meeting come about?

4 A. I was invited to meet our new investor.

5 Q. Where was the meeting with David Levy?

6 A. At Greenway Design Group's offices.

7 Q. Who was at that meeting?

8 A. Ben Lefrancois, Robert Jakubik, David Levy, and myself.

9 Q. What did David Levy say at the meeting at Greenway Design'
10 offices in the summer of 2010?

11 A. He was really effusive. He was a cheerleader. He was very
12 excited about the product and spent a great deal of time
13 talking about how proud he was to be participating with the
14 company.

15 Q. What else did David Levy say at this meeting at Greenway
16 Design's offices?

17 A. He said that we would have an attorney, a corporate
18 attorney, by the name of Bill Aul, William Aul. He made a
19 suggestion.

20 Q. What suggestion did David Levy make in addition to the
21 attorney Bill Aul?

22 A. He suggested he could do a bang-up job on press releases,
23 he had somebody that could do the press releases for us.

24 Q. Did David Levy identify that person by name?

25 A. No, he did not.

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Wyman - direct

1 Q. What was the response from Greenway Design's side to David
2 Levy's suggestion that he had a terrific person to do press
3 release?

4 A. Ben Lefrancois and Robert Jakubik both said that I would be
5 doing the press releases for the corporation.

6 Q. At this meeting did there come a time where you had any
7 one-on-one discussions with David Levy?

8 A. Yes. He pulled me aside for a minute to ask me how I did
9 press releases.

10 Q. What did you tell him?

11 A. I gave him the basic journalism 101 instruction on how I
12 assemble press releases on factual, truthful information and
13 timely, newsworthy.

14 Q. After the meeting at Greenway Design offices, what
15 discussions did you have with David Levy about press releases?

16 A. He called me a couple of times to express his enthusiasm
17 with the company. I took it as a cheerleading kind of event.
18 He called usually to ask me if there were any press releases
19 coming up.

20 Q. What would you tell him?

21 A. I told him I didn't know and that he would have to talk to
22 Ben.

23 Q. What would David Levy say in response?

24 A. He asked me to talk to Ben and encourage him to get more
25 press releases out.

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Wyman - direct

1 Q. Now let me take you sort of to the end of 2010, beginning
2 of 2011. What were you working on for Greenway Design?

3 A. I was given instructions around November to begin working
4 on something called the private placement memorandum.

5 Q. What is a private placement memorandum?

6 A. It's a document, a confidential document, given to select
7 investors that describes the company, its investment quality,
8 how we do things, what the technology was, a complete
9 description of the technology. It's basically there to give
10 the investor an idea of the value of the investment.

11 Q. Did you work on the private placement memorandum for
12 Greenway Design?

13 A. On the business narrative portion, yes.

14 Q. What do you mean by the business narrative portion?

15 A. The description of how the product worked and the company,
16 our marketing.

17 Q. When was the private placement memorandum finished?

18 A. Around February. It took about four months to do.

19 Q. What discussions did you have with David Levy about
20 Greenway Design' private placement memorandum?

21 A. He wanted a copy of it.

22 Q. How did you learn that David Levy wanted a copy of it?

23 A. He telephoned me.

24 Q. What did David Levy say?

25 A. He said send him a copy.

D3erlev1

Wyman - direct

1 Q. When was this phonecall?

2 A. It had to have been February, right around the time that I
3 finished it.

4 Q. What did you do in response to David Levy's request for a
5 copy of the private placement memorandum?

6 A. I sent it to him.

7 Q. In what format did you send it to him?

8 A. In Word.

9 Q. Why did you send the private placement memorandum in Word
10 format to David Levy?

11 A. Because he requested it.

12 Q. The private placement memorandum is something that goes to
13 potential investors?

14 A. Yes, it is.

15 Q. At this time was David Levy already an investor in Greenway
16 Design?

17 A. Yes, he was.

18 Q. What happened to Greenway Design's stock price in early
19 2011?

20 A. Early 2011 it was pretty flat. There was no movement or
21 anything.

22 Q. Did there come a time in 2011 that the stock price moved?

23 A. Yes, spring. In spring it jumped both in terms of volume
24 and price.

25 Q. What do you mean by it jumped in terms of volume?

D3erlev1

Wyman - direct

1 A. It was a rather surprising jump. Instead of a couple of
2 hundred thousand shares exchanged in a day, we were shooting
3 for a million or more.

4 Q. Why was that quite a surprising jump?

5 A. It was a surprise because it was just all of a sudden. It
6 just happened in it seemed like a matter of a week or something
7 like that that it had taken off.

8 Q. What happened to the price of the stock at the time the
9 volume took off?

10 A. It also went up.

11 Q. What happened after the price of the stock went up and the
12 volume of stock traded?

13 A. It sharply went down.

14 Q. Was the stock movement, when it went up and sharply came
15 down, before or after you sent the private placement memorandum
16 to David Levy?

17 A. After.

18 Q. What types of calls or emails did you receive about the
19 movement in the stock price dramatically up and then falling
20 down?

21 A. None from anybody except for people in the company itself.

22 Q. What types of questions did you get from any investors in
23 Greenway Design at the time the stock price went up and then
24 came down?

25 A. I got a lot of phonecalls from investors after it came

D3erlev1

Wyman - direct

1 down.

2 Q. In general, without telling us exactly what the investors
3 said, what was the nature of those investor calls to you?

4 A. They were upset. They were angry. Some were in tears.

5 Q. Why were you getting calls from outside investors?

6 A. My name is on those press releases with my phone number and
7 email address.

8 Q. What documents did the outside investors in Greenway Design
9 who were calling and were upset about the stock price coming
10 down send to you?

11 A. They sent me copies of an email that they had received from
12 other entities.

13 Q. Do you recall what entities those emails were from?

14 A. Yes. I remember Best Damn Penny Stocks.

15 Q. When was the first time you had heard of Best Damn Penny
16 Stock?

17 A. When I received those emails.

18 Q. Did you ever pay or ask Best Damn Penny Stocks to promote
19 the stock of Greenway Design?

20 A. No, never.

21 Q. What language did you see in the emails from Best Damn
22 Penny Stocks that were forwarded to you by the outside
23 investors when the stock fell in 2011?

24 A. There was one in particular that seemed to have a lot of
25 information about our projections in terms of units sold,

D3erlev1

Wyman - direct

1 things that we would only release to our investors.

2 Q. Where did you recognize that language to come from, the
3 language you saw in the Best Damn Penny Stock?

4 A. In one of the emails.

5 Q. The language that was in the Best Damn Penny Stock email,
6 where did you recognize that language to have come from?

7 A. From our PPM.

8 Q. By PPM you mean the private placement?

9 A. Yes, I'm sorry.

10 Q. The same private placement memorandum you testified earlier
11 that you sent to David Levy in February 2011?

12 A. Yes.

13 Q. I'm going to ask you to look at. It's in front of you, I
14 think it is probably the second document in your pile.

15 Actually, let's look at the third document in your pile.

16 Sorry. It's marked for identification Government Exhibit
17 605-7C.

18 MS. COHEN: Which we will move into evidence subject
19 to a stipulation between the parties.

20 Q. If you can tell me if you have ever seen Government Exhibit
21 605-7C, if you have ever seen the emails that are contained
22 within it. I'm focusing on the first 17 pages right now.

23 MS. COHEN: Mr. Dinot, if you can publish the first
24 page.

25 THE COURT: Is it in evidence?

D3erlev1

Wyman - direct

1 MS. COHEN: Your Honor, it's going to be in evidence
2 after we read another stipulation. So subject connection
3 later, it is in evidence.

4 A. Yes, I recognize some of this text.

5 Q. What do you recognize the emails contained in Government
6 Exhibit 605-7C to be?

7 A. On the first page, the top paragraph, according to an
8 article from the U.S. Department of Energy, I compiled this
9 data, this information.

10 MS. COHEN: For the record, your Honor, Government
11 Exhibit 605-7C, and for the jury pursuant to the stipulation,
12 are copies of emails sent from Best Damn Penny Stock. The date
13 range for the first 17 of these exhibits is March 22, 2011, and
14 the few days after. It goes from March 22, 2011, through March
15 30, 2011.

16 Q. Mr. Wyman, where do you recognize the language in the first
17 paragraph to be from?

18 A. Top paragraph, this is from our PPM.

19 (Continued on next page)
20
21
22
23
24
25

D3ELLEV2

Wyman - direct

1 BY MS. COHEN:

2 Q. You say our PPM, you're referring to Greenway Design?

3 A. Yes, Greenway's private placement memorandum. There's also
4 in the second page, yeah, there's more information here.

5 According to the energy information administration, there are
6 2.6 million commercial buildings and 65 million residents that
7 have central air conditioning in the U.S. today. I wrote that
8 sentence.

9 Q. And where did you write that sentence for?

10 A. For the private placement memorandum.

11 Q. That's the fifth, sixth sentence on page 2 of Government
12 Exhibit 605-7C?

13 A. I don't know which number sentence. It's on the second
14 page.

15 Q. Do you recognize -- when was the first time you saw this
16 first document, which is dated March 22, 2011, from
17 bestdamnpennystocks?

18 A. Well, I saw this in one of the emails that one of our
19 investors sent me.

20 Q. And if you can look through the first 17 pages of
21 Government Exhibit 605-7C, do you recognize any other emails
22 from bestdamnpennystocks that you'd seen before?

23 A. Yeah. There's on the third page, fourth page, I'm sorry,
24 fourth page.

25 Q. That's the email from bestdamnpennystocks dated March 22,

D3ELLE2

Wyman - direct

1 2011?

2 A. Yes.

3 Q. My Godzilla pick is Greenway Design GDGI?

4 A. That's right.

5 Q. When did you first see this email, which is the fourth page
6 of this document?

7 A. When an investor sent this to me.

8 Q. And that was when the stock price had gone down in 2011?

9 A. Yes.

10 Q. What do you recognize any of the language?

11 A. Yeah, it's under the caption about GDGI, and there's two
12 sentences. GDGI began development in 2005 and sold 16,000
13 do-it-yourself kits. Although we were releasing that in our
14 press release, that was also in the PPM.

15 Then the next sentence after that, GDGI is now ramping
16 up to meet the goal to sell 670,000 systems in three years. To
17 my knowledge, that was only released in our PPM.

18 And it looks like the end of this also, why GDGI's
19 products are important, why this has impact on all of us.
20 There are whole swads of copy here that was taken out of our
21 PPM. Although some of this could have been in a later press
22 release, but it seems like the timing would be from the PPM.

23 I just noticed something else. On the --

24 MR. SHARGEL: Is there a question before the witness?

25 MS. COHEN: I asked him if he recognized anything in

D3ELLE2

Wyman - direct

1 this document.

2 THE COURT: He's reviewing the document and
3 responding.

4 A. On the seventh page, excuse me, on the seventh page they're
5 mentioning some of our potential clients that we had listed in
6 the PPM: El Pollo Loco, Darden, Nike. Well, Nike was
7 announced. But let's see, this one, I don't know the date of
8 this one, but --

9 Q. While you're looking at it, just so we're all on the same
10 page, you're looking at an email sent from bestdamnpennystocks
11 on March 23, 2011?

12 A. Yeah.

13 Q. Continue. What do you recognize here?

14 A. Well, there's just a couple mentions of El Pollo Loco, you
15 know, I'm not really sure where that came from. There's also
16 Red Lobsters, you know. It seems like that might have come
17 from the PPM because we did mention some of the potential
18 customers we were talking to. The timing is about right too
19 because it mentions the city of Geneva, Illinois, which was a
20 client of ours by late March, mid-March.

21 Q. But some of these companies, Darden or El Pollo Loco --

22 A. They were talking to us.

23 Q. They were talking to us, but they weren't clients of
24 Greenway Design at the time --

25 A. No.

D3ELLE2

Wyman - direct

1 Q. -- of March 23, 2011, were they?

2 A. No.

3 Q. Anything, any other language in any of these
4 bestdamnpennystock emails that you recognize?

5 A. That's it right now, up to the 17th page.

6 Q. And when these you called them -- I believe you called them
7 outside investors were calling you, without naming names, what
8 type of individuals were the outside investors?

9 A. They were individual speculators, investors who, you know,
10 wanted to buy stock off the market. You know, they would go to
11 the whatever device they had and just buy stock. And some of
12 them would buy 5,000 shares, some of them would buy 10,000. We
13 had a few that bought a lot more than that.

14 Q. There were investors you referred to that called you and
15 emailed you and some forwarded to you the bestdamnpennystock
16 emails --

17 A. Yes.

18 Q. -- were they people who owned shares in Greenway Design at
19 the time they called you?

20 A. Yes. These would be people I considered high-quality
21 investors. They had a really deep interest in the product.
22 They were greenies like me. They appreciated energy savings.
23 They had followed our development. They hadn't just walked in
24 and discovered us. They had done some research on us.

25 Q. And when the stock price went up and down, did you get any

D3ELLE2

Wyman - direct

1 calls from David Levy about why the stock price was moving?

2 A. Not from David Levy, no.

3 Q. Did there come a time that the stock price moved again?

4 A. Yes, in September.

5 Q. What happened in September 2011 to Greenway Design's share
6 price?

7 A. Same pattern. Increase in -- prior to that our share price
8 had settled down, our volume had settled down. But then around
9 September sometime, it shot back up. We had instead of the
10 average 400,000 share volume, then we would have then suddenly
11 shot up to a million or more, and I believe it was a lot more
12 than a million shares sold.

13 Q. And when you say it had been -- I think your words were it
14 had been stabilized, what do you mean by that?

15 A. It stabilized before that. You know, between the time of
16 March and before September, the share price and volume had
17 really just been normal. We would be looking at an average day
18 of 40 cents a share with about 200 to 300 shares sold per day.

19 Q. And what was happening -- and we'll go back to when it went
20 up and down again in September 2011 -- but if you can just tell
21 us what was going on at the company after March 2011, what was
22 the company working on?

23 A. Well, selling the product. We shifted away from the
24 residential product and we were really focusing on the
25 commercial product because it was more profitable, and but

D3ELLEV2

Wyman - direct

1 aside from that, really not much.

2 Q. If you could actually take a look now at what's marked for
3 identification, I think it's in front of you, might have been
4 the first document on your batch or the second, Government
5 Exhibit 400-24 for identification.

6 A. I have 400-20 here. I don't have 400-24.

7 THE COURT: He doesn't have 400-24.

8 MS. COHEN: I have an extra copy, your Honor.

9 THE WITNESS: Oh, yes.

10 Q. Do you recognize Government Exhibit 400-24?

11 A. Yes.

12 Q. And what do you recognize it as?

13 A. It's one of the press releases I wrote.

14 Q. And if you look through Government Exhibit, what's marked
15 for identification Government Exhibit 400-24, are these true
16 and accurate copies of press releases you wrote starting in
17 March 4, 2011?

18 A. Yes.

19 MS. COHEN: Your Honor, the government moves
20 Government Exhibit 400-24 into evidence.

21 MR. SHARGEL: No objection.

22 THE COURT: 400-24 is received in evidence.

23 (Government's Exhibit 400-24 received in evidence)

24 MS. COHEN: Thank you, your Honor.

25 Q. And if you can, just let's just flip through them a little

D3ELLEV2

Wyman - direct

1 bit and give us a sense of what the company is doing starting
2 in March 2011 briefly by looking through these press releases.

3 And did you draft these press releases?

4 A. Yes.

5 Q. And you were responsible for issuing them on behalf of
6 Greenway Design?

7 A. Yes.

8 MS. COHEN: Mr. Dinet, if you could just pull up the
9 first page, please, of Government Exhibit 400-24, which is
10 dated March 4, 2011.

11 Q. Can you just briefly tell us what's going on in this press
12 release?

13 A. This one is from November 23, 2011.

14 MS. COHEN: You know what, a moment, your Honor.

15 Q. I'm sorry, Mr. Wyman. If you could just look at the first
16 one in your packet, which is also now up on the screen.

17 A. All right. Yes.

18 Q. It's now in chron order. That's the difference.

19 It's dated March 4, 2011?

20 A. Yes, ma'am.

21 Q. Just tell us very briefly what's it about.

22 A. Well, this is something that Ed Begley came up with to
23 compare Greenway Cool-n-Save residential product using DOE
24 figures on compact fluorescent lights, and we equated our
25 energy savings to 38 compact fluorescent light bulbs.

D3ELLE2

Wyman - direct

1 Q. Who is Ed Begley?

2 A. He was our celebrity endorser when I joined the company.

3 Q. If you can look at the next press release, second one.

4 This one is also dated March 4, 2011. What's going on at
5 Greenway Design here?

6 A. We had a dealership relationship in Jamaica. This was
7 through the government of Jamaica.

8 Q. And if you can turn to the next press release, which is
9 dated March 9, 2009, which is about a Nike installation?

10 A. Yes.

11 Q. Nike was one of the companies referenced in those
12 bestdamnpennystocks emails we looked at before?

13 A. Yes.

14 Q. What's that press release about?

15 A. We were approved to install a system on that particular
16 Nike installation.

17 Q. If you can look at the next press release dated March 18,
18 2011, what's the Hughes Network Solutions installation?

19 A. That was a big sale. That actually was one of our biggest
20 sales that year for Hughes Network Systems and that was a big
21 event.

22 Q. That's March 18, 2011, right?

23 A. Yes, it is.

24 Q. If you can go to the next one, which is also dated
25 March 18, 2011, this is about the energy saving?

D3ELLE2

Wyman - direct

1 A. Yeah. We had some of our dealers ask us to start putting
2 out releases that validated the technology more clearly because
3 it was in our sales literature and on our website. So we
4 extracted this information and put it in this press release.

5 Q. And if you can look at the next press release, dated
6 March 21, 2011, announcing a municipal installation, which I
7 believe you saw earlier in one of the bestdamnpennystock emails
8 about the fire department?

9 A. Yes. This is for the police department and the fire
10 department, Geneva, Illinois. And this was a significant event
11 because it was definitely one of our first municipal
12 installations.

13 Q. If you can look at the next press release, which is dated
14 March 23, what was the reason for that press release?

15 A. This was the first release that described our water
16 treatment system that goes with the technology, very important,
17 again, another release that our dealers were asking us to issue
18 to validate the technology.

19 Q. If you can look at the next press release dated March 28,
20 2011.

21 A. Yes.

22 Q. Why was this press release issued?

23 A. Commercial installations, testimonials from one of our --
24 couple of our oldest installations. And, again, another one
25 that we were issuing in support of our dealers to show that the

D3ELLEV2

Wyman - direct

1 technology was being used and had verifiable results.

2 Q. If you can look at the next press release, which is dated
3 April 19, 2011, which announces an installation at a Denny's
4 restaurant?

5 A. Yeah, that was a test installation. Denny's corporate had
6 approved us for this franchise location. And it was an
7 important one because it signaled the beginning of our
8 relationship with Denny's restaurants.

9 Q. This was April 19, 2011?

10 A. April 19, yes.

11 Q. If you can look at the next press release, April 21, 2011.

12 A. Yes.

13 Q. And this references that Greenway Design is a finalist for
14 the Harvey Mudd award?

15 A. Yeah, this was a major event. I spent quite a few months
16 learning thermodynamics and learning how to talk to engineers
17 and made quite a few presentations to engineers at Harvey Mudd
18 College and they selected us as a finalist.

19 Q. And if you can look at the next press release, which I
20 believe announces Greenway's win of that Harvey Mudd award,
21 June 16, 2011?

22 A. June 16. This is a joint release that was released by Tech
23 America and us. And we beat, in this release, we beat Fisker
24 Automotive, which is one of my crowning jewels here, our
25 crowning glory. But this was a major, major event.

D3ELLE2

Wyman - direct

1 Q. If you can look at August 18, 2011.

2 A. Yes.

3 Q. Talking about a new treatment and filtration system that
4 you got a patent for?

5 A. Yeah, we filed a patent for it. We had mentioned it before
6 in an earlier release, but we were re-mentioning it because by
7 that time we had filed a patent.

8 Q. If you can look at the next press release, which is dated
9 September 13, 2011, what's being talked about in this press
10 release?

11 A. The Washington University in Missouri approved us for a
12 test on one of their buildings.

13 Q. If you look at the next press release, which is dated
14 September 14, 2011, about Costa Rica?

15 A. No, this is testing results, September 13.

16 Q. Apologies. I skipped one. What is this about?

17 A. We had collected quite a bit of new data on our
18 performance. Century Link, and I think maybe there was one
19 other -- oh, it was all about Century Link. Century Link had
20 told us not to use their corporate name in the headline, but we
21 could mention them in the body of the press release. So this
22 is a way of getting that information out.

23 Q. Without violating your instructions from your deal?

24 A. Without violating our instructions, that's right.

25 Q. And if you can look at the next page, which I think is now

D3ELLE2

Wyman - direct

1 the Costa Rica?

2 A. Costa Rica, right.

3 Q. And what is this press release announcing?

4 A. Our first installation in Costa Rica, the Banco National in
5 Jaco.

6 Q. And if you can look next press release, which talks about
7 commercial sales, and that's dated September 26, 2011?

8 A. Yeah, September 26. This is announcing that our sales had
9 increased 370 percent over the previous year.

10 Q. And I think that takes us back to before we started, we
11 went through these press releases, that the stock price went up
12 and down dramatically again September of 2011?

13 A. Yes.

14 Q. And what calls did you get at that time, September 2011,
15 from investors or what emails did you get from investors
16 regarding the dramatic increase and drop in the share price?

17 A. More upset people. We were beginning to lose our faith --
18 our really high-quality investors that were very upset, angry.
19 And then they started sending me more of the emails that they'd
20 been receiving.

21 Q. If I can have you look back at Government Exhibit 605-7C,
22 turn to page 18 of the document which are press -- which are
23 emails sent from bestdamnpennystocks started September 13,
24 2011, and just look through them and tell me if you recognize
25 any of these emails from bestdamnpennystocks?

D3ELLEV2

Wyman - direct

1 A. Yes, I recognize some of these.

2 Q. And how do you recognize them?

3 A. Just some of the verbiage that's used on this, it caught my
4 eye, lots of superlatives that are trying to describe the
5 investment opportunity, I guess.

6 Q. And were any of the emails contained here in Government
7 Exhibit 605-7C the same as the emails forwarded to you from
8 outside investors?

9 A. Yes.

10 Q. What did you tell the outside investors when they were
11 calling and emailing you about what was happening to Greenway
12 Design stock?

13 A. Well, in September I had to come up with, you know, we had
14 to explain more what was going on with the stock and we told
15 them that it was, you know, probably rogue investors. We
16 didn't know. We were really grasping at straws. But, you
17 know, really we weren't in control of the marketplace. But
18 most important, that none of our board members or any employee
19 was selling stock. We were accused of that. And so that was
20 one of the things I had to tell everybody.

21 Q. Who was accusing Greenway Design of its board members and
22 employees selling stock they held in Greenway Design?

23 A. These investors that were calling me.

24 Q. And why was it important to tell those investors that the
25 stock was not being sold from people inside the company?

D3ELLEV2

Wyman - direct

1 A. Well, they didn't want to feel like we were abandoning them
2 or betraying their trust.

3 Q. I'm going to ask you to look at what's in evidence as
4 Government Exhibit 400-20. I'm going to ask you to look at the
5 first page, which is a shareholder letter dated September 28,
6 2011. Do you recall this letter?

7 A. Yes, I do.

8 Q. And why do you recall it, what is it?

9 A. This letter was an attempt to formalize what I'd been
10 telling people verbally on the phone.

11 Q. Why was it necessary to formalize what you'd been telling
12 people verbally on the phone?

13 A. As a statement from the corporation.

14 Q. Why did you believe it was necessary to issue a statement
15 from the CEO of the corporation?

16 A. Because we felt it needed to be in print and part of our
17 disclosure.

18 Q. If I can back up for a minute and have you look at what's
19 in evidence as Government Exhibit 104-14.

20 A. Yes.

21 Q. Have you look through them, first one is up on the screen.
22 You have it in front of you as well?

23 A. Yes.

24 Q. Do you recognize this newsletter from
25 bestdamnpennystock.com?

D3ELLEV2

Wyman - direct

1 A. Not this one.

2 Q. Did you ever authorize or draft anything for
3 bestdamnpennystock.com?

4 A. We would never say anything speculative about the price of
5 our stock, so no.

6 Q. If you can look at the second document, Government
7 Exhibit 104-15, another email from bestdamnpennystocks, sort of
8 newsletter?

9 A. I don't recognize it. But, again, it's nothing that we
10 would ever submit.

11 Q. Look at the third document, which is Government
12 Exhibit 104-16, from something called smallcapsource.com?

13 A. This I recognize.

14 Q. How do you recognize this?

15 A. Because of the big bold headline there, smallcapsource.com.

16 Q. And when was the first time you saw this email to Small Cap
17 Source subscribers?

18 A. It was emailed to me by an investor.

19 Q. It was emailed to one of those investors that was angry
20 about the price of the stock plummeting?

21 A. Yes.

22 Q. I'm going to ask you to look at the Government
23 Exhibit 104-18 --

24 A. Yes.

25 Q. -- from something called Penny Stock Perfection, did you

D3ELLE2

Wyman - direct

1 ever see this before?

2 A. No.

3 Q. Ask you to look at Government Exhibit 104-19. It's another
4 email from Penny Stock Perfection to their members about
5 Greenway Design. Have you ever seen this before?

6 A. No, I did not.

7 Q. Ask you to look at Government Exhibit 104-20, web posting
8 from Microstock Profit. Have you ever seen this before?

9 A. No.

10 Q. If I can ask you to look at Government Exhibit 104-21,
11 which is an article from Microstock Profit talking about
12 Greenway Design?

13 A. This one actually rings a bell. I think I saw this one.

14 Q. And in what context did you see it?

15 A. It was among the emails that was submitted, sent to me by
16 our investors.

17 Q. Do you see on the second page there's a chart; do you
18 recognize that chart? Was that --

19 A. Yeah, it's part of our SEC filings.

20 Q. What happened after the stock price went up and down
21 September 2011 and Greenway issued the shareholder letter,
22 Government Exhibit 400-20, what happened to the company?

23 A. Well, we actually our financial situation became dire.
24 Company was unable to pay my bills, my invoices on a regular
25 basis. The morale of the company and with our investors fell

D3ELLEV2

Wyman - direct

1 sharply. I began hearing from our investors that they were
2 leaving and they were getting out. Some are our older
3 investors, the people who invested in the company when it was
4 still a private company, were pretty upset too.

5 Q. When you say investors were getting out, what do you mean
6 by that?

7 A. They were selling out. They were taking their losses.

8 THE COURT: Ms. Cohen, would this be a convenient
9 place to take our morning break?

10 MS. COHEN: Perfect, your Honor.

11 (Recess)

12 THE COURT: Ms. Cohen, you can proceed.

13 MS. COHEN: Thank you, your Honor.

14 Q. Mr. Wyman, when did you stop working for Greenway Designs?

15 A. September 2012.

16 Q. And why did you stop doing work for Greenway Designs?

17 A. The company was no longer paying me.

18 Q. And why was the company no longer paying you?

19 A. It had run out of funds.

20 Q. What was the last thing you did work-wise for Greenway
21 designs?

22 A. I filed a press release regarding the moratorium of
23 issuance of shares.

24 Q. And what do you mean by that, what was that press release?

25 A. The company was promising a six-month cessation of issuing

D3ELLE2

Wyman - direct

1 new shares based on various mechanisms that companies use,
2 converting debt into shares and things of that nature.

3 Q. Why was the company stopping to issue shares in
4 September 2012?

5 A. Sorry. Because many of our older investors, debt holders,
6 were cashing out.

7 Q. When you mean older, do you mean long-term or age-wise?

8 A. Long-term investors.

9 Q. Why was it necessary for the company to put a moratorium of
10 selling shares in September 2012?

11 A. Because the stock was dropping precipitously. We had gone
12 into sub-penny.

13 Q. What effect did the stock price that went up and down the
14 two times in March 2011 and again in September 2011, what
15 effect did this have on the company's financial situation?

16 A. Well, it didn't really have any effect because the company
17 never received any money from the sales of stock.

18 Q. What effect did the stock price going up and down two times
19 dramatically in 2011 have on the company overall?

20 A. From, well, everybody felt terrible. Everybody felt awful
21 about. And it I believe that it also impacted our customers, a
22 few of our customers were watching. And I was told actually
23 specifically --

24 MR. SHARGEL: Objection what he was told.

25 THE COURT: Sustained.

D3ELLEV2

Wyman - direct

1 Q. What was the impact from customers on Greenway Designs?

2 A. I know from a dealer that a customer was watching our
3 stock.

4 MR. SHARGEL: Same objection.

5 THE COURT: Overruled.

6 Q. You may continue.

7 A. That a customer, this would be a major one, I can't
8 remember the name of the customer in Oklahoma, and they were
9 watching our stock prices, mainly because they were looking for
10 stability and they didn't see it.

11 Q. When you left the company, what was the share price at?

12 A. Sub-penny. It was below a penny.

13 MS. COHEN: No further questions, your Honor.

14 THE COURT: Mr. Shargel.

15 CROSS-EXAMINATION

16 BY MR. SHARGEL:

17 Q. Mr. Wyman, my name is Jerry Shargel and I represent David
18 Levy. So I have some questions for you.

19 You said just a few moments ago that investors, that
20 some of the older investors -- not an age, by length of time
21 they had been investors -- that some of the older investors
22 were cashing out; do you remember that?

23 A. Yes.

24 Q. And how did they do that?

25 A. Well, they converted their debt to stock.

D3ELLEV2

Wyman - cross

1 Q. And then they sold the stock, right?

2 A. I assume so.

3 Q. And, well, that was one of the issues that you had in 2012,
4 right?

5 A. What they did with their stock after they did that, they
6 talked to me and they made arrangements with Mr. Lafrancois.

7 Q. And the investors had unrestricted shares, right?

8 A. The ones that had purchased shares?

9 Q. Yes.

10 A. Yes.

11 Q. And if they could sell the shares, then they would sell the
12 shares, right?

13 A. Yes.

14 Q. No question about that, correct?

15 A. That's right.

16 Q. Now, in 2012, you said you left the company. Do you
17 remember the month in 2012?

18 A. September.

19 Q. And in the spring of 2012, around April of 2012, was there
20 another promotion of Greenway stock?

21 A. I don't know anything about a promotion. I just know that
22 the company was selling, you know, that old debt holders were
23 converting their shares and selling their shares.

24 Q. So what you know is that the debt holders, meaning people
25 who had advanced money to the company -- and do you know who

D3ELLE2

Wyman - cross

1 the largest debt holder was?

2 A. David Levy was.

3 Q. He was the largest, right?

4 A. Yes, he was.

5 Q. So before we talk about David Levy, the other debt holders,
6 as you described them, were doing all they could to recoup
7 whatever money they could, right?

8 A. I assume that's what they were doing.

9 Q. Well, you know from your business experience that those
10 investors had a right to try to recoup their investments,
11 right?

12 A. Yes.

13 Q. No question about that, right?

14 A. That's right.

15 Q. Nothing improper about that?

16 A. That's right.

17 MS. COHEN: Objection, your Honor.

18 THE COURT: Overruled.

19 Q. And one of the ways of recouping the investment was to take
20 the stock that they have in the company and to sell the stock,
21 right?

22 A. Yes.

23 Q. Now, you said, and I don't want to jump around, but you
24 said that in -- you wouldn't put anything speculative, you
25 wouldn't be speculative in talking about numbers, right?

D3ELLEV2

Wyman - cross

1 A. About the share price.

2 Q. About share prices and revenues, right?

3 A. That's right.

4 Q. And, in fact, you said that in connection with the private
5 placement memorandum, that you were the person who would
6 assemble the financial information, right?

7 A. I assembled the business narrative.

8 Q. The business narrative, how is that different from the
9 financial information? Please explain to the jury.

10 A. The financial information is produced by the CPA. That's
11 the balance sheet, you know, our ledger, our general
12 accounting.

13 Q. And that's a report of the present health, financial health
14 of the company, right?

15 A. Yes.

16 Q. It's all in the present. The CPA is giving you a backward
17 look in his study, what's happened in the last year, and if
18 you're on a calendar year or fiscal year, gives you an account
19 of what happened during that year, right?

20 A. Yes.

21 Q. What the income was and what the expenses were, right?

22 A. That's right.

23 Q. And what profits there were, if any, right?

24 A. Yes.

25 Q. And the time you came into the company -- remind us what

D3ELLE2

Wyman - cross

1 year that was?

2 A. 2009.

3 Q. In 2009, at the end of the year, can you remember as you
4 sit here now whether there were profits in the company?

5 A. No, I do not.

6 Q. You don't remember or?

7 A. I don't remember.

8 Q. And 2010, do you remember whether it was profitable in
9 2010?

10 A. No, it was not profitable then.

11 Q. It was running in the negative, right?

12 A. Yes, it was.

13 Q. So you were still dependent upon investors, right?

14 A. Yes.

15 Q. You were still dependent on fresh money, right?

16 A. Yes.

17 Q. And David Levy over here, your largest investor, you were
18 depending on him, right?

19 A. Yes.

20 Q. And you knew that he was doing everything he could to raise
21 money, right?

22 MS. COHEN: Objection, your Honor.

23 THE COURT: Overruled.

24 A. Yes.

25 Q. And raise money, one way to raise money was in connection

D3ELLE2

Wyman - cross

1 with the private placement memo, right?

2 A. Yes.

3 Q. And that was to see if you could go out and not only bring
4 his money into the company, but to bring fresh or new money
5 into the company, right?

6 A. Yes.

7 Q. Because this startup company needed to -- needed capital to
8 keep it afloat until it could float by itself, right?

9 A. Yes.

10 Q. Or swim by itself, better said, right?

11 A. Yes.

12 Q. And from the time you joined that company to the time that
13 you left in 2012, was there ever a moment when it was, if I
14 could borrow the metaphor, swimming by itself?

15 A. No.

16 Q. In 2011, 2011, when you drew the -- I'm sorry -- 2010, when
17 you drew -- I stand corrected -- when you drew the private
18 placement memorandum; you recall that?

19 A. Yes, I do.

20 Q. You told us that you had a background in journalism, right?

21 A. Yes.

22 Q. So you know how, and based on that and based on your long
23 business experience, you knew how to do a private placement
24 memo, right?

25 A. I knew how to write the business narrative.

D3ELLE2

Wyman - cross

1 Q. What was the business narrative? Please define that for
2 us --

3 A. Describe --

4 Q. -- as you're using the term.

5 A. Describing the product, describing how it works, what
6 markets it applies to, describing the customer, describing the
7 conditions of the marketplace.

8 Q. Is it fair to say that the objective is to put it, put the
9 company in the most favorable light consistent with truth and
10 accuracy; is that a fair statement?

11 A. Consistent with truth and accuracy, yes.

12 Q. And let me show you what's been marked as Defendant's
13 Exhibit A303 for identification. Do you recognize it?

14 A. Yes.

15 Q. What do you recognize it to be?

16 A. The private placement memorandum.

17 MR. SHARGEL: I offer it in evidence.

18 MS. COHEN: No objection, your Honor.

19 THE COURT: 303 is in evidence then.

20 (Defendant's Exhibit A303 received in evidence)

21 MR. SHARGEL: Yes.

22 Q. And just tell us the date so we have a record of some
23 certainty, the date of the memorandum.

24 A. Well, I finished it in February.

25 Q. Of '10?

D3ELLEV2

Wyman - cross

1 A. Of two thousand -- no, 2011.

2 Q. 2011?

3 A. I think so.

4 Q. Do you want to take a look at it again?

5 A. Yeah, please.

6 (Continued on next page)

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D3erlev3

Wyman - cross

1 A. I was writing this from November 2010 on, so there is
2 material here. But I had the impression --

3 Q. Could you speak a little louder.

4 A. I started writing this in November 2010.

5 Q. When was it completed?

6 A. I believe it was --

7 Q. The best you can recall. I'm not pinning you to --

8 A. February 2011.

9 Q. May I have it for a moment?

10 A. Yes.

11 Q. Thank you. You said at the beginning of your testimony
12 that David Levy paid you and -- I'm sorry. You said you
13 started writing it in November of 2010?

14 A. I believe so, yes.

15 Q. Let me show you what's been marked for identification as
16 Defense Exhibit A302. I put this in front of you. I'm going
17 to ask you to take a look at it and see if it refreshes your
18 recollection as to when you wrote this and when it was
19 completed.

20 A. This is correspondence between Kevin Reed, our general
21 manager, and somebody named Swartzburg, Michael Swartzburg.

22 Q. Yes. My question to you is, does it refresh your
23 recollection?

24 A. Yes.

25 Q. As to the dates?

D3erlev3

Wyman - cross

1 A. Yes.

2 Q. Could you tell the jury, please, what dates, now that your
3 recollection is refreshed.

4 A. March 2010.

5 Q. May I have the document.

6 THE COURT: You started in March of 2010, not November
7 of 2010?

8 THE WITNESS: Yes, I think maybe that is more
9 accurate. Sorry.

10 Q. Actually, already you had a first draft in March of 2010,
11 correct?

12 A. Right.

13 Q. Actually, this was being distributed in March of 2010,
14 right?

15 A. I don't remember. I really, honestly don't remember.

16 Q. Let me show you what's been marked as Defense Exhibit A300
17 for identification. I put this in front of you and I ask you
18 if this refreshes your recollection about whether it was in
19 March of 2010 that this private placement memo that you drew
20 began to be circulated.

21 A. Yes, it seems to follow that it was distributed, or at
22 least the first draft was available by March 10, 2010.

23 Q. Do you remember telling us at the beginning of your direct
24 testimony that there came a time when David Levy called you on
25 the telephone and asked you for a copy of that in Word?

D3erlev3

Wyman - cross

1 A. Yes, he did.

2 Q. Was there a draft circulated that was not in Word, PDF,
3 Adobe?

4 A. It was a PDF document, right.

5 Q. That's the same as Adobe?

6 A. Yes.

7 Q. That means you can't cut and paste from it if it's sent in
8 that format?

9 A. I wouldn't say you can't. You can.

10 Q. But the request, as you testified, was for a Word version,
11 right?

12 A. Yes.

13 Q. It was David Levy's request?

14 A. Yes. I submitted a Word document.

15 Q. If you submitted as a Word document, do you know about a
16 Word document being distributed? I show you what has been
17 marked as Defense Exhibit A301 for identification. I ask you
18 to take a look at that. How many people in the company had put
19 in a request for a Word document or received a Word document?

20 A. Everybody.

21 Q. David Levy was asking you for a Word document?

22 A. Yes.

23 Q. And it was distributed to whom?

24 A. To David Levy.

25 Q. Who else?

D3erlev3

Wyman - cross

1 A. Kevin Reed, who was also editing.

2 Q. Yes, and who else?

3 A. Ben Lefrancois.

4 Q. Anyone else?

5 A. Yes, Robert Jakubik.

6 Q. My question to you, sir, is after you circulated the Word
7 document, were there edits that were sent back to you?

8 A. Yes.

9 Q. Did you incorporate any of those edits or suggestions into
10 the Word document?

11 A. Yes.

12 Q. Did you incorporate those changes or suggestions? First of
13 all, who made them? Let's start with that. Who made the
14 suggestions?

15 A. Everybody.

16 Q. That included Mr. Lefrancois, right?

17 A. Yes.

18 Q. That included Mr. Reed, correct?

19 A. Yes.

20 Q. Anyone who received a copy of the Word document suggested
21 that there were edits to be made, right?

22 A. Yes.

23 Q. You were the person in charge, right?

24 A. Yes.

25 Q. You were the final scribe in connection with this, right?

D3erlev3

Wyman - cross

1 A. Yes.

2 Q. You gathered information when you put this private
3 placement together, you gathered information from internal
4 sources, right?

5 A. And external.

6 Q. What was the external sources you were canvassing?

7 A. The Department of Energy.

8 Q. The United States Department of Energy?

9 A. Yes.

10 Q. And statistics and information with regard to that agency,
11 right?

12 A. Yes.

13 Q. What other source?

14 A. Ed Begley, Jr.

15 Q. He was --

16 A. Celebrity.

17 Q. The talent or the celebrity?

18 A. Yes.

19 Q. May I ask this question. I have to ask this question. Did
20 you really think that because Ed Begley, Jr. liked this
21 product, everyone would rush out and buy it?

22 MS. COHEN: Objection, your Honor.

23 THE COURT: Sustained.

24 Q. Actually, the person who asked for the Word document was
25 Kevin Reed, not David Levy, correct?

D3erlev3

Wyman - cross

1 A. No. David Levy asked me for the document. I received a
2 phonecall. As I said, he was a cheerleader. He wanted to make
3 sure that I was doing my job right. I know that David Levy
4 asked me to send the document.

5 Q. Do you remember Kevin Reed asking to receive a copy of the
6 document in Word?

7 A. Oh, yes, multiple times.

8 Q. So he wanted a copy in Word as well?

9 A. Every time there was a draft.

10 Q. I don't want to belabor this. The point is that everyone
11 or anyone who asked for the Word version would get the Word
12 version, right?

13 A. Absolutely, yes.

14 Q. And anyone and everyone who had something to say would go
15 back to you, right?

16 A. Yes.

17 Q. The Word version, whether it was red-lined or changed,
18 however it was, came back to you, right?

19 A. Yes.

20 Q. When it came back to you, you were the person who made the
21 ultimate decision as to what should be added, edited, changed,
22 or not, right?

23 A. Per instructions.

24 Q. Per instructions from Mr. Lefrancois?

25 A. Yes.

D3erlev3

Wyman - cross

1 Q. Certainly David Levy wasn't saying take this, he wasn't
2 giving you orders to take something out or put something in,
3 right?

4 A. No. He wasn't my client.

5 Q. He was not your client, he was not your boss, right?

6 A. That's right.

7 Q. He did not in any way suggest that you change numbers or
8 change facts or change figures, right?

9 A. No, he did not.

10 Q. Going back for a moment, and I'll come back to that
11 subject, going back to the idea of whether speculative
12 information would be contained in anything that went out to the
13 public, I show you what is now in evidence as A303. I'm going
14 to direct you to a certain page. We don't have it in the
15 computer. I'll work without it.

16 MR. SHARGEL: I'm going to do it the old-fashioned
17 way, Judge.

18 THE COURT: OK. We'll enjoy that.

19 Q. Let me show you page 24 of A303. This is a document in
20 evidence. What you have here, if I may -- this is the
21 old-fashioned way. I'll show you.

22 MR. SHARGEL: May I publish this to the jury, your
23 Honor?

24 THE COURT: Please.

25 Q. All right. This is the old-fashioned way. The projected

D3erlev3

Wyman - cross

1 revenues, the highlights, the objective were \$50 million in
2 2011, more than a hundred million dollars in revenue in 2012 in
3 sales, in sales, more than \$150 million in 2013, and in 2014
4 approximately \$200 million in sales. Do you see that.

5 A. Yes.

6 Q. Now I'm going to turn the page to page 36.

7 MR. SHARGEL: I'm going to ask permission to publish
8 this.

9 Q. This is sales by year. This is a summary, right?, sales by
10 year: 2010 under \$50 million, somewhere between zero, closer
11 to zero, and \$50 million, pretty close to zero; 2011
12 \$50 million; 2012, over \$100 million; 2013 almost \$200 million;
13 in 2014 \$250 million. Do those numbers sound familiar to you,
14 sir? You went over this carefully before it ever got out of
15 your hands, right?

16 MS. COHEN: Your Honor, if he could ask a question.

17 THE COURT: If that's an objection, it's overruled.

18 Q. You went over it carefully before you let this out of your
19 hands? The whole document. I'm not isolating a page. This
20 document.

21 A. Yes.

22 Q. On page 42 also projections and yearly gross margin, do you
23 see that? 2014, again \$104 million in cash balance,
24 \$104 million. Is it fair to say that these numbers are
25 speculative?

D3erlev3

Wyman - cross

1 A. Yes. They are in our private placement memorandum.

2 Q. But the private placement memorandum was not some secret
3 document that you kept in a safe in the office. This was
4 intended to be shown to potential investors, right?

5 A. To investors that received our questionnaire and were
6 qualified.

7 Q. Qualified investors? You weren't being that picky, were
8 you, about who was investing? You needed cash very
9 desperately, right?

10 A. We followed rules. We had questionnaires filled out, and
11 people subscribed and promised that they wouldn't release the
12 information. So this was not a press release.

13 Q. This was not a press release, but this was a document that
14 contained accurate information, right?

15 A. What we believed to be accurate, yes.

16 Q. Including within it speculation, fair statement?

17 A. Yes.

18 Q. Now I'm going to ask you a question about the press
19 releases. You as an experienced journalist knew that they had
20 to be truthful and accurate, right?

21 A. Yes.

22 Q. Each one of the press releases that were put before you by
23 the government, by Ms. Cohen, when she put them before you and
24 you looked at press release after press release, is there
25 anything that you wrote in any one of those press releases that

D3erlev3

Wyman - cross

1 was not truthful and accurate?

2 A. Nothing.

3 Q. You didn't put anything in your press release that was
4 intended to mislead the public, right?

5 A. Did not.

6 Q. This is, like you said you gave Mr. Levy, press release 101
7 or however you phrased it, right? Basic rules regarding press
8 releases, right?

9 A. Yes.

10 Q. You knew and you were well familiar with and had experience
11 in the area of issuing press releases, right?

12 A. Yes.

13 Q. You had been doing that as an important part of your
14 professional résumé, right?

15 A. Yes.

16 Q. That was something that you were well qualified to do,
17 right?

18 A. Yes.

19 Q. Keep your voice up a teeny bit.

20 A. Yes.

21 Q. Maybe get closer to the microphone. You knew that a press
22 release, by its terms, to go back to 101, by its terms, press
23 release means that the public is going to get information
24 through the media, right?

25 A. Yes.

D3erlev3

Wyman - cross

1 Q. That is something different than a private placement
2 memorandum because there is nothing confidential about a press
3 release, right?

4 A. That's right.

5 Q. It doesn't say on the top on any one that you saw or had in
6 front of you or ever wrote, it doesn't say "confidential press
7 release," does it?

8 A. That's right.

9 Q. A press release is like spreading the good news, right?

10 A. Yes.

11 Q. Seriously, you were out there trying to get good news about
12 the company published, right?

13 A. Yes.

14 Q. You didn't want to just sit in your office. You wanted
15 people to start reporting and circulating and acting,
16 purchasing, investing?

17 A. Yes.

18 Q. Based on the press release, right?

19 A. Yes.

20 Q. Every time that there was a good story that went out, a
21 positive event or development, you wanted to get that out there
22 in the public, right?

23 A. Yes.

24 Q. You weren't trying to fool or deceive anyone, right?

25 A. That's right.

D3erlev3

Wyman - cross

1 Q. If that got picked up, your press release -- by the way,
2 how did that work? The press release is drawn, it's ready for
3 release. I'll make up a date. March 14th, like today. Is it
4 the 14th? March 14th you issue a press release on behalf of
5 the company. What happens next in terms of media attention?
6 Please tell us.

7 A. It's a little different than it's been in past years. We
8 send it out on the wire, like a Market Wire or PR Newswire.
9 Then those releases are picked up by outlets like Google News,
10 Yahoo! News.

11 Q. Bloomberg?

12 A. Yes, Morningstar, those outlets. They disseminate that
13 information directly to the reading public. We don't wait for
14 news editors to pick up our release anymore. We send it out
15 directly to the audience.

16 Q. If a news organization, whether it's Barron's or Wall
17 Street Journal or New York Times, if a news organization has
18 someone from the financial pages for the business section of
19 the Times, for example, reading the wire and gathering this
20 positive information about the company and the product, only
21 the company and the product, what the company's objectives are
22 and developments in Mexico or whatever it is, those people are
23 free to write a story about the company, aren't they?

24 A. Yes.

25 Q. They are free to look at the Pink Sheets and suggest that

D3erlev3

Wyman - cross

1 this might be something worth looking into and purchasing, a
2 stock that might be worth purchasing, they are free to do that,
3 right?

4 A. Yes.

5 Q. There is no need to call you on the phone to say if
6 Bloomberg picks it up, does Bloomberg have to call you on the
7 phone and say, sir, do I have your permission to write a story
8 about your product?

9 A. No.

10 Q. You're delight that had a story is picked up by Bloomberg
11 or any other news outlet, right?

12 A. Yes.

13 Q. They don't have to say, could we have your permission to
14 write a story, right?

15 A. No.

16 Q. If someone were picking this up, whether it's a tout or
17 whether it's someone who professes to be an expert at picking
18 stock, whatever it is, they are using your news release to
19 report the story, right?

20 A. Yes.

21 Q. If they pick up on truthful and accurate information, that
22 is entirely proper, right?

23 A. Yes.

24 Q. No question about that, right?

25 THE COURT: Do you have any questions about that, Mr.

D3erlev3

Wyman - cross

1 Wyman?

2 A. No.

3 MR. SHARGEL: I think I'm done. No further questions.

4 THE COURT: Ms. Cohen?

5 MR. SREBNICK: I have no questions, Judge.

6 **REDIRECT EXAMINATION**

7 BY MS. COHEN:

8 Q. Mr. Wyman, are people free to use the press releases that
9 you write to make false statements about stock in Greenway
10 Design?

11 A. Would you repeat that, please?

12 Q. Sure. Are people free to use your press releases about
13 false statements about the share price of the stock in Greenway
14 Design?

15 A. They can use a press release for anything they want.

16 Q. Are they free to use your press release to manipulate the
17 stock?

18 MR. SHARGEL: Objection. I'm going to object to this.

19 THE COURT: Overruled.

20 A. Yes.

21 Q. You were asked some questions about what you wanted the
22 public to do with your press releases while you were
23 disseminating them. Do you remember that, on cross?

24 A. Yes.

25 Q. Was one of the things you wanted to be done with your press

D3erlev3

Wyman

1 releases was to have them used by Best Damn Penny Stocks to
2 manipulate the stock?

3 MR. SREBNICK: Objection to the term "manipulate."

4 THE COURT: Overruled.

5 A. I have no determiner as far as who reads our press release.
6 Anybody can use it.

7 Q. You were asked on cross I think a couple of questions about
8 what you wanted the press releases to do in the marketplace.
9 You wanted them to help sell the product and to help promote
10 the product. Do you recall that line of cross?

11 A. Yes.

12 Q. Was one of the things you wanted to do by issuing the press
13 releases, did you want different websites and email addresses
14 to send out press releases about the stock price?

15 A. No. I really wanted people to use what I wrote and use it
16 faithfully, truthfully.

17 Q. Also on cross you were asked if you were happy if the New
18 York Times or The Wall Street Journal wrote about Greenway
19 Design, do you recall?

20 A. Yes, I would be very happy.

21 Q. Were you very happy, "delighted" I think was your word,
22 when you saw the emails from the investors about what you said
23 about Greenway Design in Best Damn Penny Stocks?

24 A. I was devastated, actually.

25 Q. You talked about the private placement memorandum and that

D3erlev3

Wyman

1 you had sent out a questionnaire to prospective investors to be
2 certified. Do you recall that?

3 A. Yes. The private placement memorandum is a package. It's
4 three documents. There is a questionnaire, there's a
5 subscription agreement, and then there is the private placement
6 memorandum, the document itself that describes the company.

7 Q. What is the questionnaire?

8 A. The questionnaire is a suitability questionnaire. We want
9 to know who these people are. We want to know if they are a
10 viable investor.

11 Q. Why does Greenway Design want to know who is getting a copy
12 of the private placement memorandum?

13 A. They have to have the wherewithal to be able to invest in
14 the company.

15 Q. What is the subscription agreement that you also send along
16 with the private placement memorandum?

17 A. Once we agree that they are suitable investor, then we
18 authorize the subscription agreement for them to purchase
19 shares from the company at a discounted rate.

20 Q. You were shown the private placement memorandum. On the
21 cover of it says "confidential." Do you recall that?

22 A. Yes.

23 Q. Why does it say "confidential" on the face of the document?

24 A. Because I put it there.

25 Q. Why did you put it there?

D3erlev3

Wyman

1 A. Because I was instructed. It's a document that doesn't go
2 out to the public.

3 Q. You were also asked some questions about numbers in the
4 private placement memorandum that Mr. Shargel called
5 speculative. Do you remember that?

6 A. Yes.

7 Q. Why are speculative numbers in a private placement
8 memorandum?

9 A. We're giving the investor an idea of what might happen if
10 we got full funding in our marketing and in our operations.

11 Q. Would you use those same speculative numbers in a press
12 release for the company?

13 A. No.

14 Q. Why not?

15 A. For one thing, we would get into a lot of trouble for that.
16 But it's not truthful, it's not newsworthy, it's based on our
17 guesses.

18 Q. Do you recall you were asked some questions on cross-
19 examination about David Levy, instructions he did not give to
20 you about the private placement memorandum? Do you remember
21 Mr. Shargel asked you did David Levy tell you to change the
22 private placement memorandum?

23 A. I remember that.

24 Q. After you sent the private placement memorandum in Word to
25 David Levy, what discussions did you have? Did David Levy call

D3erlev3

Wyman

1 you and tell you you had to change the document or edit it in
2 any way?

3 A. No, he did not.

4 Q. What other investors did David Levy bring to Greenway
5 Design?

6 A. I do not know.

7 MS. COHEN: No further questions, your Honor.

8 MR. SHARGEL: Very briefly. May I?

9 THE COURT: Yes.

10 **RECROSS-EXAMINATION**

11 BY MR. SHARGEL:

12 Q. Did I hear you say that you would send out the private
13 placement memo to potential investors along with the
14 questionnaire?

15 A. I believe that the sequence of events was that the
16 questionnaire would go to the investor first.

17 Q. You would get the questionnaire back and then decide
18 whether to send the private placement memo?

19 A. Yes. Actually, that decision wasn't mine. It was other
20 people.

21 Q. You were familiar enough with the company to know that
22 that's what would happen?

23 A. That's right, yes.

24 Q. The two items didn't go out at the same time, it was one
25 after another, right?

D3erlev3

Wyman - recross

1 A. One after another, yes.

2 Q. The questionnaire came back, someone looked at it, and the
3 private placement memo was sent out?

4 A. Yes.

5 Q. The private placement memo was after the questionnaire had
6 demonstrated that these were qualified investors, right?

7 A. That's right.

8 Q. Both amount of money, level of sophistication perhaps, that
9 they were qualified investors?

10 A. Yes.

11 Q. The whole idea was to attract, to then attract an
12 investment, right?

13 A. Yes.

14 Q. The idea that it was confidential or the numbers you didn't
15 want to get out, you certainly didn't want to fool anyone with
16 those numbers, right?

17 A. No.

18 Q. Those were the product of an honestly held belief that this
19 is where the company may go under the right circumstances,
20 right?

21 A. Well, there was a huge disclaimer, about I think almost 15
22 pages, that says you could lose money on this thing.

23 Q. That disclaimer is important, isn't it?

24 A. Yes.

25 MR. SHARGEL: No further questions.

D3erlev3

Wyman - recross

1 MS. COHEN: Nothing further, your Honor.

2 THE COURT: Mr. Wyman, you are excused. Thank you
3 very much.

4 (Witness excused)

5 THE COURT: Do you have a next witness?

6 MS. COHEN: Your Honor, the government calls Wieghaus
7 W-I-E-G-H-A-U-S, I believe.

8 THE CLERK: Please spell your name for the record.

9 THE WITNESS: Mark, M-A-R-K. The last name is
10 W-I-E-G-H-A-U-S.

11 MARK WIEGHAUS,

12 called as a witness by the government,
13 having been duly sworn, testified as follows:

14 THE COURT: Mr. Weighaus, please sit down. Speak
15 right into the microphone.

16 Ms. Cohen.

17 DIRECT EXAMINATION

18 BY MS. COHEN:

19 Q. Mr. Wieghaus, how old are you?

20 A. 59.

21 Q. Where do you live?

22 A. I live in Emerson, New Jersey.

23 Q. Are you married?

24 A. Yes.

25 Q. How many children do you have?

D3erlev3

Wieghaus - direct

1 A. Three.

2 Q. Are they young, grown, out of the house?

3 A. Grown.

4 Q. Where do you work now?

5 A. I work for Toshiba Corporation.

6 Q. What is your title at Toshiba?

7 A. My title is director of operations.

8 Q. In general, what are your duties and responsibilities as a
9 director of operations at Toshiba?

10 A. I manage the order process, purchasing, inventory, and
11 distribution functions. We distribute copiers, multifunction
12 copiers, in the tri-state area.

13 Q. By copiers, are you referring to photocopiers?

14 A. Yes.

15 Q. How long have you work at Toshiba?

16 A. About a year and a half.

17 Q. What were you doing prior to working at Toshiba?

18 A. Prior to that I was unemployed for about 14 months. Then
19 prior to that I worked for Ricoh Corporation for about 22
20 years.

21 Q. What did you do at Ricoh Corporation?

22 A. My last position, I was a manager of supply chain.

23 Q. What types of products were you working on for Ricoh?

24 A. The same, photocopiers.

25 Q. When you were working at Ricoh, how did you invest your

1 money?

2 A. Over the years, just through the 401(k) plan that the
3 company provided.

4 Q. What investing could you do with the money you held in
5 Ricoh's 401(k) while you were at Ricoh?

6 A. You could just invest in various mutual funds.

7 Q. What happened when you left Ricoh's employment with respect
8 to the money held in the 401(k) there?

9 A. I transferred it out of the company 401(k) plan and into an
10 IRA type account.

11 Q. When you left Ricoh, was it mandatory that you take the
12 money out of its 401(k) plan?

13 A. No, it wasn't mandatory, no.

14 Q. Where did you move your money to?

15 A. I moved some of it, I think half to an IRA account that I
16 was invested in mutual funds, and then another part into like a
17 stock type trading account.

18 Q. Did you move it in equal parts?

19 A. Pretty much, yes.

20 Q. What was the total amount of the 401(k) from your 22 years
21 at Ricoh?

22 A. About 250,000.

23 Q. So the half of it is about 125,000?

24 A. Roughly, yes.

25 Q. The 125,000 that you moved into the mutual fund account,

D3erlev3

Wieghaus - direct

1 what trading could you do in that account?

2 A. Very little. Just in mutual funds.

3 Q. The other half of the 401(k), the other 125,000 you said
4 you put in a stock trading account?

5 A. Yes.

6 Q. Where was that stock trading account?

7 A. With TD Ameritrade.

8 Q. Other than those two accounts, did you have any other
9 investments or savings accounts?

10 A. Very little.

11 Q. Around what time period did you split your 401(k) half into
12 a mutual fund account and half into a trading account?

13 A. Roughly at the end of 2010, like December 2010, maybe
14 January 2011.

15 Q. Is that after you had left Ricoh?

16 A. Yes.

17 Q. What did you do with the money that went into your IRA
18 stock trading account?

19 A. I started to invest in various types of stocks.

20 Q. What types of stock did you invest in?

21 A. All types. Large corporations, medium size, and small.

22 Q. When you say small, what are you talking about?

23 A. Some small startup companies.

24 Q. How did you decide what stocks to trade in?

25 A. I had subscribed to some various type stock newsletters.

D3erlev3

Wieghaus - direct

1 Q. Do you recall the names of any newsletters you subscribed
2 to?

3 A. I think one was called like Stansbury Research, something
4 to that effect. I think The Street. Then there may have been
5 one other. Then over the course of time some like penny stock
6 newsletters.

7 Q. What penny stock newsletters did you subscribe to?

8 A. I think one was called the Penny Stock News or something
9 like that. Then another one was Best Damn Penny Stocks.

10 Q. How do you subscribe to, for example, Best Damn Penny
11 Stocks newsletter?

12 A. I probably received an email and then I signed up on their
13 website.

14 Q. How do you sign up on the went to receive a newsletter from
15 Best Damn Penny Stocks?

16 A. You give them your email address.

17 Q. Do you pay anything to be a subscriber?

18 A. Excuse me?

19 Q. Do you pay any fee to be a subscriber?

20 A. No, not on that specific one. Others, yes.

21 Q. After you provide Best Damn Penny Stocks with your email
22 address, how often do you receive newsletters from Best Damn
23 Penny Stocks?

24 A. They would vary, but you would get several in a day and
25 then nothing for a week. So it varied.

D3erlev3

Wieghaus - direct

1 Q. Why did you sign up to receive, for example, the Best Damn
2 Penny Stock newsletter?

3 A. Just looking for different types of investments.

4 Q. At some point in time did you learn about a company called
5 Greenway Design?

6 A. Yes.

7 Q. How did you learn about Greenway Design?

8 A. Through an email that I received from Best Damn Penny
9 Stocks.

10 Q. What did you learn about Greenway Design through the email
11 you got from Best Damn Penny Stocks?

12 A. That it was a startup company and they had some products
13 that saved energy, and that they were in the process of
14 manufacturing them and doing field testing and then trying to
15 start generating revenue to operate the company.

16 Q. What did you do after you read about --

17 THE COURT: Excuse me. Speak right into the
18 microphone so the jury can hear you.

19 THE WITNESS: OK.

20 THE COURT: Go ahead.

21 Q. What did you do after you read about Greenway Design in the
22 Best Damn Penny Stock newsletter?

23 A. I tried to do some additional research into the company,
24 which you can do on the Internet in general or through the TD
25 Ameritrade trading account, where they give you information on

D3erlev3

Wieghaus - direct

1 the companies.

2 Q. What did you look at with respect to Greenway Design on the
3 Internet?

4 A. It gives you the basic information: Press releases from
5 the company itself, just general information about their
6 products and what their goal is and what they are trying to do.

7 Q. When you looked online, did you look online to see a
8 website for Greenway Design, the company?

9 A. Yes, I think I did visit the actual website.

10 Q. Why did you do additional research online about Greenway
11 Design after reading about it in the Best Damn Penny Stock
12 email?

13 A. I just tried to get information from various sources just
14 to sort of confirm things.

15 Q. What do you mean by confirm things?

16 A. That you read just to confirm that the company was involved
17 in the manufacture of the, I forget the name, I think it was
18 Cool-n-Save, a product to save electricity with air
19 conditioning systems.

20 Q. After you did the additional research online about Greenway
21 Design, what did you do with respect to any investment of your
22 money in Greenway Design stock?

23 A. I started to make some investments in Greenway Design.

24 Q. Do you recall when it was that you started investing in
25 Greenway Design?

D3erlev3

Wieghaus - direct

1 A. I think it was March 2, 2011.

2 Q. Did you make subsequent investments in Greenway Design?

3 A. Yes, I did.

4 Q. I'm going to ask you to look at a document that's been
5 marked for identification Government Exhibit 400-28. I ask you
6 if you recognize it, and if so, what is it?

7 A. Yes, I recognize it. It's a detailed transaction log of
8 the transactions of the stock that I had purchased, of the
9 sales and purchases that I provided to you.

10 Q. That document, where does it come from?

11 A. It comes from the TD Ameritrade account.

12 MS. COHEN: Your Honor, the government moves
13 Government Exhibit 400-28 into evidence.

14 MR. SHARGEL: No objection.

15 THE COURT: 400-28 is in evidence.

16 (Government's Exhibit 400-28 received in evidence)

17 MS. COHEN: Mr. Dinet, if we can publish it, please.

18 Q. If you could please explain for us what is shown here on
19 Government Exhibit 400-28.

20 A. It shows all the detailed transactions of purchases and
21 sales of the GDGI symbol, which is the symbol for Greenway
22 Design.

23 Q. You see in the amount column it has negatives sometimes and
24 positives.

25 A. Right.

D3erlev3

Wieghaus - direct

1 Q. Did you that mean a loss or a profit? What does that mean?

2 A. No. The negative indicates that it was a purchase, meaning
3 money went out of my account. Then the positive would be a
4 sale, which means money into the account.

5 Q. On this document it shows all your trades, buying and
6 selling, of Greenway Design starting on March 22, 2011?

7 A. Yes.

8 Q. Do you recall when was the stock of Greenway Design at its
9 highest price level?

10 A. I believe right near the end of March, right around the end
11 of March in 2011.

12 Q. Was that when you first started buying the stock, when it
13 was at its high price?

14 A. Yes, slightly before that.

15 Q. I ask you to look at what's in evidence subject to a
16 stipulation as Government Exhibit 605-7C. I ask you to look at
17 those. For the record, those are emails from Best Damn Penny
18 Stock starting March 22, 2011.

19 A. Yes.

20 Q. Do you recognize any of those emails?

21 A. Yes, I recognize most of them.

22 Q. How do you recognize them?

23 A. Just from remembering what I was reading about the company
24 I think actually one thing was these particular newsletters,
25 quite often they talked about people trying to short the stock.

D3erlev3

Wieghaus - direct

1 I remember that. That's something a lot of them did.

2 Q. What about when you got the emails from Best Damn Penny
3 Stocks starting March 22, 2011, which was the first day you
4 bought stock in Greenway Design, right?

5 A. Yes.

6 Q. What about those email newsletters led you to invest in
7 Greenway Design?

8 A. They provided information about the company. I guess
9 together with whatever research that I had done, I thought it
10 would be a good investment.

11 Q. Do you see -- look at the first one, for example, I think
12 it is the second or third page -- there is some sort of
13 disclaimer on the bottom?

14 A. Yes.

15 Q. Do you recall if you read the disclaimer when you got the
16 email?

17 A. No, I didn't.

18 Q. Why not?

19 A. Disclaimers are in agreements all over the place. I don't
20 generally read them.

21 Q. What happened to the stock price after you started buying
22 Greenway Design starting on March 22, 2011?

23 A. The stock price went up for a short period of time and then
24 started to go down.

25 Q. What did you do when the stock price started to go down?

D3erlev3

Wieghaus - direct

1 A. In this case I was purchasing more.

2 MS. COHEN: Mr. Dinet, if you can put back the 400-28
3 in evidence. Thank you.

4 Q. Why did you buy more stock when the stock price started to
5 go down?

6 A. I guess I originally intended that it was a good company
7 and that long term it would be good.

8 Q. What happened to your investment? Overall, how much did
9 you invest in Greenway Design?

10 A. I'm not sure of the amount. This shows just the net
11 result.

12 Q. How much money did you lose in Greenway Design?

13 A. 107,000.

14 Q. In the stock trading account you had 125,000?

15 A. Yes.

16 Q. You lost 107,000 of that?

17 A. Yes.

18 Q. So most of it?

19 A. Mm-hm.

20 Q. The only other savings account you had at the time was the
21 other 125 in mutual funds?

22 A. Yes.

23 Q. That was from your 20 years working at Ricoh, right?

24 A. Yes.

25 MS. COHEN: A moment to confer, your Honor?

D3erlev3

Wieghaus - direct

1 THE COURT: Yes.

2 MS. COHEN: No further questions, your Honor.

3 THE COURT: Mr. Shargel.

4 CROSS-EXAMINATION

5 BY MR. SHARGEL:

6 Q. Do you have a paper copy of this exhibit in front of you,
7 of your purchases and sales?

8 A. Yes.

9 Q. May I take it from you, please. The first page of this
10 transaction, if we could go to the first page. Is it possible
11 to blow up, say, the first third of the page. We'll come back
12 to this in one second, for now we will have it on the screen.

13 You have a full-time job at Toshiba?

14 A. Yes.

15 Q. Back in 2011 you were employed full time as well?

16 A. No.

17 Q. What was your employment then?

18 A. I was unemployed.

19 Q. That's right. I think you said on direct examination you
20 were unemployed for, what, how many months?

21 A. I think like 14 months.

22 Q. You had money in a 401(k) that you took out and you had
23 money in a 401(k) that you withdrew from the 401(k), right?

24 A. Yes.

25 Q. Then you put into --

D3erlev3

Wieghaus - cross

1 A. Into an IRA.

2 Q. You had purchased penny stocks before, right?

3 A. Yes, but only maybe like a year before.

4 Q. At this time in March of 2011, you were unemployed?

5 A. Yes.

6 Q. You bought 5,000 shares of Greenway on March 22nd, right?

7 A. Yes. This shows the actual trades that were made but not
8 the actual, let's say, trades that I entered. In other words,
9 if you see like two purchases there, one for 5,000 and a second
10 line says 10,000, I may have put out a purchase order for
11 15,000 and then purchased two different transactions.

12 Q. Two tranches, two sections, correct?

13 A. Yes.

14 Q. That could have been at one time. Then on the same day,
15 March 22, 2011, you sold 5,000 shares, right?

16 A. Yes.

17 Q. You told us that you went to the website of Greenway,
18 right?

19 A. Yes.

20 Q. You thought it seemed like a good product to you, right?

21 A. Mm-hm.

22 Q. You have to answer orally.

23 A. Yes.

24 Q. Did you ever purchase one for your home out in New Jersey?

25 A. No.

D3erlev3

Wieghaus - cross

1 Q. Did you do any other research in connection with the
2 company?

3 A. No.

4 Q. Let's go back to the line, the third line, 3/22/2011, where
5 you sold 5,000 shares, and then you sold 1,000 shares, and then
6 you sold 215 shares, and then you sold 1,000 shares, and then
7 you sold 500 shares. I'm not going to read this whole thing.

8 A. Right.

9 Q. But sold, sold, sold. Then on 3/28, six days later, you
10 bought, bought, bought, right?

11 A. Well, the way it works is it's not like a market. You
12 can't put a market order in. You have to buy at a certain
13 price and sell at a certain price.

14 Q. Yes.

15 A. If you say, I want to sell at a certain price, you enter
16 that price. You don't know when it is going to execute.

17 Q. Right.

18 A. Right. So it could take a week, a month, whatever.

19 Q. The bid and the asked could change, right?

20 A. Yes.

21 Q. No question about that, right? There is a spread between
22 the bid and the asked, right?

23 A. Yes, right.

24 Q. Keeping in mind what you just told us, 3/28, 3/28, and then
25 let's look at March 30th.

D3erlev3

Wieghaus - cross

1 MR. SHARGEL: If you could scroll down a little.

2 Q. March 30th, starting with now buying Greenway stock, we
3 have a whole lot of entries for March 30th, right?

4 A. Yes.

5 Q. Then we have a whole lot of entries on the next page of the
6 document, I don't have to belabor this, but you were buying in
7 a lot of tranches and selling. You looked at this exhibit in
8 preparation for your testimony, right?

9 A. Yes.

10 Q. You went over this with the government, right?

11 A. Yes.

12 Q. What you were really doing was day trading, weren't you?
13 Weren't you?

14 A. Yes.

15 Q. You were unemployed. I'm not being critical of this at
16 all.

17 A. Yes, I understand.

18 Q. You were unemployed. You would sit at the computer, and
19 regardless of whether Greenway had a good product or a bad
20 product, you would see the ticks in the market. You're a
21 sophisticated guy, right?

22 A. Not really.

23 Q. Well, semi-sophisticated? You have been in business your
24 entire life, right?

25 A. Yes.

D3erlev3

Wieghaus - cross

1 Q. The bottom line is this is day trading activity, fair
2 statement?

3 A. Fair.

4 Q. You mentioned on direct examination about startup
5 companies, do you recall that?

6 A. Yes.

7 Q. You knew Greenway was a startup company by going to its
8 website, right?

9 A. Yes.

10 Q. You had invested in startup companies before, right?

11 A. Yes, a few.

12 Q. Were there any startup companies that you invested in where
13 you made a whole lot of money?

14 A. No.

15 MR. SHARGEL: No further questions.

16 MS. COHEN: A few, your Honor?

17 THE COURT: OK. Be very brief. Then we can break for
18 lunch.

19 MR. SREBNICK: Judge, can I have a moment before the
20 prosecutor?

21 MS. COHEN: I'm sorry.

22 THE COURT: No. Go ahead, Ms. Cohen.

23 **REDIRECT EXAMINATION**

24 BY MS. COHEN:

25 Q. The first time you heard about Greenway Design, that was

D3erlev3

Wieghaus - redirect

1 when Best Damn Penny Stocks sent you an email saying it would
2 be a good investment?

3 A. Yes.

4 Q. If we could look again, please, at Government Exhibit
5 605-7C. First, leave Government Exhibit 400-28. You buy and
6 sell stock on March 22nd, then again March 28 and March 30th,
7 right? We are talking about March.

8 A. Yes.

9 Q. If you can look at Government Exhibit 605-7C for a minute,
10 which is in front of you.

11 A. Yes.

12 Q. Do you see the emails from Best Damn Penny Stock, and they
13 are dated March 22nd? There is a bunch of them on March 22nd?

14 A. Yes.

15 Q. There is a few on March 23, March 27, March 28, and March
16 23, correct?

17 A. Yes.

18 MS. COHEN: No further questions, your Honor.

19 THE COURT: You are excused.

20 MR. SHARGEL: May I have one?

21 THE COURT: No.

22 You are excused. Thank you very much.

23 (Witness excused)

24 THE COURT: Ladies and gentlemen, we will now take our
25 luncheon recess.

D3erlev3

(Jury not present)

THE COURT: Does anybody want to take up anything?

MR. SREBNICK: I do, your Honor.

THE COURT: Yes, Mr. Srebnick?

MR. SREBNICK: I believe I have a right to cross-examine the witness.

THE COURT: I agree with that on a count that is relevant. All this testimony dealt with David Levy. There is not a word in this count about Donna Levy. Any questions you would ask I believe are irrelevant. This testimony deals only with Greenway.

MS. COHEN: And she is not charged in that count, your Honor.

THE COURT: That's what I just said, Ms. Cohen. Anything else?

MR. MASTER: No, your Honor.

THE COURT: See you at 2 o'clock.

(Luncheon recess)

D3ELLE4

AFTERNOON SESSION

2:04 p.m.

(Jury not present)

THE COURT: Mr. Shargel.

MR. SHARGEL: May I take something up? I hope you're in a cheerful mood when I do this.

THE COURT: I'm always in a cheerful mood.

MR. SHARGEL: Judge, we have been working diligently, and if you looked at our email traffic, we're up half the night. This is an enormously complicated case on the stock fraud and wire fraud and what the issues are. If you insisted, we would do it, but it's very, very difficult. Here's what I'm proposing.

THE COURT: You're not going to submit your jury charges today.

MR. SHARGEL: That's where I'm getting.

THE COURT: It's all right. If I can get them by tomorrow night, I'll have the weekend to work on it.

MR. SHARGEL: That would be great.

THE COURT: Can you do it by tomorrow night?

MR. SHARGEL: Here's what I was going to propose. Let me put it before you.

We're finishing this trial before any, earlier than any expectation, including the jurors. We were thinking if we could sum up Tuesday instead of Monday and have the charge

D3ELLE4

1 conference after you read the request and have the charge
2 conference on Monday and sum up, we would be to the jury by
3 Tuesday afternoon or Wednesday morning at the latest. It's
4 about a week and a half earlier than our earliest expectation.

5 Would that work for your Honor?

6 THE COURT: So you're suggesting the jury be off on
7 Monday.

8 MR. SHARGEL: Yes.

9 MS. COHEN: We have no objection to that.

10 MR. SHARGEL: Thank you, Judge.

11 THE COURT: Is everybody going to be finished by
12 Friday?

13 MR. SHARGEL: Yes, tomorrow. We'll be finished by
14 tomorrow. Defense is going to be something like a hour.

15 MR. SREBNICK: We'll all be done by tomorrow.

16 THE COURT: Further instructions from Mr. Kramer?

17 MR. SHARGEL: Pardon me, Judge. Mr. Kramer should be
18 speaking for himself.

19 MR. KRAMER: I was going to ask.

20 MR. SHARGEL: You understand he's the ventriloquist.

21 MR. KRAMER: I was going to ask if we could have
22 Saturday to work on the jury instructions because since we're
23 working in court on Friday, it's hard to have a team meeting
24 about it, and we get it to you by the end of the day on
25 Saturday.

D3ELLE4

1 MS. COHEN: Fine with the government, your Honor.

2 THE COURT: That's fine too.

3 MR. SHARGEL: Thank you, Judge.

4 MR. SREBNICK: Thank you very much.

5 THE COURT: You're entirely welcome. Is the jury
6 here?

7 THE DEPUTY CLERK: Not yet, no.

8 THE COURT: Who's the witness for this afternoon?

9 MS. COHEN: Your Honor, the government is going to
10 call Special Agent Eastman. Sorry.

11 THE COURT: You have some stipulations.

12 MS. COHEN: First we're going to call another investor
13 victim, Mr. Shiflet, then we're going to Special Agent Eastman
14 very briefly, and then Joseph Saranello. It's all with respect
15 to the money laundering part.

16 THE COURT: That's it?

17 MS. COHEN: Then we have some stipulations and
18 documents we want to publish. And also at the end we'll have
19 Agent Reinhardt, but I expect that will happen Friday morning.

20 THE COURT: OK. And what kind of defendant's case do
21 we have, just documents, Mr. Srebnick?

22 MR. SREBNICK: Judge, there is one witness we're
23 contemplating calling who would be less than half an hour but
24 we may be able to avoid.

25 (Pause)

D3ELLE4

1 THE COURT: Mr. Shargel and Ms. Cohen, you're working
2 on submitting a joint jury charge, is that it?

3 MS. COHEN: We had tried, your Honor. The defense
4 said they want to submit their own so that's why we submitted
5 ours.

6 THE COURT: How far apart are we, Mr. Kramer? Is
7 there going to be some commonality?

8 MR. KRAMER: There's going to be a lot of commonality.
9 We have no problem with the pattern jury instructions for the
10 money laundering, wire fraud. We feel based on what we think
11 are the government theories about wire fraud and securities
12 fraud that there should be little tweaks to them. For example,
13 that certain things are not securities fraud that you can
14 instruct.

15 THE COURT: OK.

16 MR. KRAMER: Forward looking statements, for example.
17 So we're going to have a short letter with additions to the
18 pattern jury instructions.

19 THE COURT: OK. The jury is all here.

20 (Witness present)

21 THE COURT: Ms. Cohen, are these exhibits for the next
22 witness?

23 MS. COHEN: No, I don't believe they are. No, your
24 Honor, sorry. We didn't retrieve them from the last witness.

25 (Continued on next page)

D3ELLE4

1 (Jury present)

2 THE COURT: Mr. Master, are you going to call your
3 next witness?

4 MR. MASTER: Yes. At this point the government calls
5 William Shiflet.

6 WILLIAM MARION SHIFLET II,
7 called as a witness by the Government,
8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MASTER:

11 Q. Good afternoon, Mr. Shiflet.

12 A. Good afternoon.

13 Q. How old are you, sir?

14 A. I'm 45 years old.

15 Q. And where do you live?

16 A. I live in Union, West Virginia.

17 Q. And how big of a town is Union, West Virginia?

18 A. It is a population of 500, and it is in southern West
19 Virginia near Roanoke, Virginia, below White Sulphur Springs,
20 West Virginia.

21 Q. How far did you go in school?

22 A. I have my business of administration degree from Concord
23 University with a emphasis on marketing, and I also have some
24 postgraduate education.

25 Q. And are you married?

D3ELLEV4

Shiflet - direct

1 A. Yes, I am.

2 Q. What does your wife do?

3 A. She is a director of vocational education in Greenbrier
4 County schools in West Virginia.

5 Q. And do you have any children?

6 A. Yes, I do. I have three children.

7 Q. How old are they?

8 A. They are 13, 15, and 16 -- or 17.

9 Q. And where do you work?

10 A. I am a Nationwide insurance agent in Union, West Virginia,
11 and also, my family, we own a farm and run a cattle farm.

12 Q. I'd like to direct your attention to 2010.

13 A. Yes, sir.

14 Q. How much money did you have in savings at that time, liquid
15 savings?

16 MR. SREBNICK: Objection, relevance.

17 THE COURT: Overruled.

18 A. I had just sold some bank stock and it was about \$135,000
19 that I put in an E*Trade account, around there.

20 Q. And what if any financial objectives did you have at that
21 time?

22 A. Well, I wanted to supplement my income as the company I
23 work with -- I'm a captive agent -- had recently lost a large
24 settlement in West Virginia and stated they were going to
25 retract from the market. They had closed all the regional

D3ELLE4

Shiflet - direct

1 offices and they had raised the premium and the underwriting,
2 so it made it very difficult to sell policies. We had the
3 business for 16 years and since I was captive, I was not
4 allowed to sell with any other company.

5 So I was looking for something to supplement my income
6 to keep paying on my farm mortgage and send my kids to college.

7 Q. Did there come a time when you started looking for
8 investments with the opportunity of higher returns to try to
9 meet those goals?

10 A. Absolutely.

11 Q. And as part of that activity, what if anything did you do
12 to research what's known as penny stocks?

13 A. I would look on the internet, not necessarily penny stocks,
14 but any stock where the volume had increased or the price had
15 increased. And CNBC, I would watch it every day and Fox
16 financial, anything that I could find, any internet thing that
17 I could find that was related to investments.

18 Q. And as you were looking around the internet for investment
19 options and information, did there come a time when you saw a
20 paid internet advertisement for a penny stock newsletter called
21 bestdamnpennystock?

22 A. Yes.

23 Q. What did you do when you saw the internet advertisement?

24 A. I clicked on it and gave them my email address and started
25 receiving newsletters.

D3ELLE4

Shiflet - direct

1 Q. Was that in approximately 2010?

2 A. That is correct.

3 Q. Did there come a time when you invested in penny stocks
4 that were recommended on bestdamnpennystock.com?

5 A. Yes. I believe I invested in at least three of their penny
6 stocks.

7 Q. How much money did you lose on those three?

8 A. Close to \$50,000.

9 Q. Now let's talk about one of the stocks you invested in.
10 It's called Emerging World Pharma.

11 Are you familiar with the stock that trades under the
12 symbol EWPI?

13 A. Yes, I am.

14 Q. I'd like you to take a look at what's in front of you as
15 Government Exhibit 607 to 611. Do you recognize those
16 documents?

17 A. Yes, sir, I do.

18 Q. And first with respect to 607 to 609, what are they?

19 A. 607 through 609 are my E*Trade statements.

20 Q. And how about 610 and 611?

21 A. 610 and 611 are emails that I received from
22 bestdamnpennystocks.

23 Q. Concerning what stock?

24 A. EWPI.

25 MR. MASTER: At this time the government offers

D3ELLE4

Shiflet - direct

1 Government Exhibit 607 to 611.

2 MR. SREBNICK: No objection, Judge.

3 THE COURT: Mr. Shargel.

4 MR. SHARGEL: I have no objection.

5 THE COURT: 607 to 611 are in evidence.

6 (Government's Exhibits 607 to 611 received in
7 evidence)

8 MR. MASTER: Now, Mr. Dinnet, if you could publish
9 Government Exhibit 607.

10 Q. It's an email entitled Seven Reasons to Love EWPI, and it's
11 dated April 6 at 2:57 a.m.

12 Do you remember looking at this email in the morning
13 of April 6, 2010?

14 A. Yes, I do.

15 Q. And your email address is SHIFLEW@hotmail.com?

16 A. That is correct.

17 Q. And what about this email attracted you to EWPI?

18 A. Well, it was a glowing report on this up and coming company
19 that once I looked at this email and then looked at the company
20 news and the volume of the stock, I believe that, you know,
21 according to Yahoo finance, EWPI's market cap is 1.7 million.
22 That is in my opinion EWPI would have to go to three to four
23 bucks before it is fairly valued. I felt like with looking at
24 the company news that this was an opportunity to make some
25 money.

D3ELLEV4

Shiflet - direct

1 Q. To reach the goals that you had described?

2 A. To reach the goals that my wife and I have set for our
3 family.

4 Q. Now, in addition to going and looking at company news, what
5 if anything did you do to look at what's known as the chart for
6 the stock?

7 A. Right. I always look at the chart to see the volumes and
8 whether they're up or down, if there's momentum or it's going
9 downwards with the volume.

10 Q. And why is the volume, why was the volume important to you?

11 A. The volume is very important to show that other investors
12 are purchasing the stock and are positive on it as well. It's
13 a good sign that it's going to go up in my previous -- in my
14 thought processes in 2010, that was a great indicator that I
15 was not the only one that thought this was a positive purchase.

16 Q. And at the time, what if anything did you observe happening
17 to the price of EWPI?

18 A. It had gone up to this point. I had looked and it had gone
19 up with the volume, the price had. I can't remember from what
20 to what, but it had risen.

21 Q. And as you later learned, to cut to the chase, that was the
22 peak of the stock price?

23 A. That was the peak that day, I believe, yes, when they sent
24 this, 90 some cents. And they were predicting, one email, two
25 to three, and this one, three to \$4.

D3ELLEV4

Shiflet - direct

1 Q. Now, there is -- if you could just turn to the second page.

2 A. Of 611?

3 Q. Yeah. Just going to ask you, first of all, something --
4 there's some language at the end of this, after "sincerely,
5 staff of bestdamnpennystock.com," right?

6 A. Yes.

7 Q. How carefully did you read that before making the decision
8 to invest?

9 A. I read it but not carefully, as I do not read most
10 disclaimers, unfortunately, as I should in the business I'm in,
11 but I don't necessarily.

12 Q. How commonly do you see disclaimers in investment
13 newsletters?

14 A. Well, just like in a prospectus or company news, there are
15 disclaimers on forward-looking statements on every investment.
16 I think it's required by the SEC. So everything that you read
17 anymore has a disclaimer of some type.

18 Q. And when you skimmed through the disclaimer, what if
19 anything in the disclaimer suggested to you that the
20 recommendation to purchase the stock was something you weren't
21 supposed to act on?

22 A. What my opinion of the disclaimer at the time was is if I
23 did lose on this stock, I could not civilly hold
24 bestdamnpennystocks for my loss, which I understand that.
25 That's a civil disclaimer. And I'm not here asking for my

D3ELLE4

Shiflet - direct

1 money back and I understand that.

2 There is no disclaimer that I know of that has ever
3 been written that excludes --

4 MR. SREBNICK: Objection, Judge.

5 THE COURT: Sustained.

6 Q. Now, it states at the bottom that the message was sent from
7 bestdamnpennystock.com to you, and it states it was sent from
8 Eric Cusimano; do you see that?

9 A. Yes, I do.

10 Q. Do you know who Eric Cusimano is?

11 A. No, I do not.

12 Q. And it also states -- you read it again in preparation for
13 your testimony here today, right?

14 A. Correct.

15 Q. It states that bestdamnpennystock.com expects to be
16 compensated \$250,000 cash from a third party, Capital
17 Investment Group, for EWPI investor relations services; do you
18 see that?

19 A. Yes, I do.

20 Q. Do you have any idea who Capital Investment Group is?

21 A. No, I do not.

22 Q. Or what connection if any they have to the selling of EWPI
23 stock?

24 A. No, I do not.

25 Q. And so what did you do after you saw this recommendation,

D3ELLE4

Shiflet - direct

1 stock purchase recommendation?

2 A. Purchased I think close to \$15,000 worth of stock.

3 Q. And if you wouldn't mind turning to Government Exhibit 608,
4 Mr. Dinet. Fifth page. I'm sorry. Sixth page.

5 A. OK.

6 MR. MASTER: And if you wouldn't mind zooming in on
7 that.

8 Q. It shows you purchased Emerging World Pharma on April 6,
9 2010 at 9:33 a.m, do you see that, and then there was an
10 additional purchase recorded at 9:39 a.m.; do you see that?

11 It's page 6 of 7.

12 A. Yes, I do see that.

13 Q. And what price did you buy it at?

14 A. I bought one transaction at 90 cents and one transaction at
15 eighty-nine fifty.

16 Q. And how soon after market opened were these purchases
17 recorded?

18 A. Well, it looks like nine minutes after the market opened
19 and eight minutes or three minutes.

20 Q. Market opens at 9:30?

21 A. Yes, sir.

22 Q. And what happened to the price of Emerging World Pharma on
23 April 6, 2010?

24 A. It dropped drastically.

25 Q. Dropped in half?

D3ELLE4

Shiflet - direct

1 A. That is correct.

2 Q. And even after it dropped in half, what if anything had you
3 received from bestdamnpennystocks?

4 A. I received an email stating that there was a short position
5 and that it had to be covered, I believe.

6 MR. MASTER: Mr. Dinet, if could you publish
7 Government Exhibit 610.

8 Q. Is that the email you remember receiving that evening,
9 April 6, 2010?

10 A. Yes.

11 Q. It states, What the heck are you waiting for? And it says,
12 EWPI ripped right of the gate this morning hitting a high of 94
13 cents. Then it states, EWPI then pulled back giving plenty of
14 opportunities. What happened today was even stronger
15 confirmation of more possible huge upside with EWPI closing in
16 the green 15 percent and a complete wash out of weak hands.

17 Actually, and then I just want to call your attention
18 to the paragraph, Today EWPI exploded out of the gate with a
19 huge high of 94 cents for a 51 percent gain and then dipped
20 down so the savvy investor could average down and take
21 advantage of this bad boy at a nice discount.

22 What if anything did you understand this to mean?

23 A. Well, at the time I believed what they were saying and I
24 thought this was a wonderful opportunity to get back in to
25 dollar cost average my position. And I was still thinking of

D3ELLE4

Shiflet - direct

1 two to \$3 in the future from what I was told in these emails.

2 Q. And what do you mean by dollar cost averaging?

3 A. Well, if you have the opportunity to purchase the stock at
4 a lower price, it lowers your average cost per share. And as
5 some analysts say, buy on the dips. Hopefully, it's not a
6 roller coaster dip going down, but you catch it at a bottom in
7 order to acquire more shares to lower your average.

8 Q. Is that what you understood average down to me?

9 A. Yes.

10 Q. Because the average price of your shares go down?

11 A. Correct.

12 Q. And what did you do after you received this email?

13 A. I made another purchase. I can't remember how much; I'm
14 sure it's here. But I made another purchase that morning or at
15 lunch time, I believe, on lunch break from a conference.

16 MR. MASTER: And if you wouldn't mind returning to
17 page 6 of Government Exhibit 608, Mr. Dinet.

18 Q. Do you see there on this trade list it shows your purchase
19 during a lunch break, as you remember, on the next day,
20 April 7, 2010?

21 A. That's correct.

22 MR. MASTER: And so, Mr. Dinet, if you wouldn't mind
23 just zooming out a little bit so the jury can see how much he
24 purchased.

25 Q. It shows you purchased an additional 20,000 shares at 49

D3ELLE4

Shiflet - direct

1 cents?

2 A. Yes.

3 Q. And, again, what was your purpose in making that purchase?

4 A. It was to try to take advantage of a dip to lower my dollar
5 cost per share and, hopefully, watch it go up, as this
6 newsletter said it should.

7 Q. That was what you understood bestdamnpennystock to be
8 recommending?

9 A. Yes.

10 Q. Now, what ended up happening to the price of Emerging World
11 Pharma?

12 A. I believe a month later I sold part of my position for 29
13 cents. So it went -- it just continued going down from that
14 point. It was not a dip.

15 Q. You mean it turned out not to be a dip?

16 A. Absolutely.

17 Q. It turned out to be straight down?

18 A. Straight down.

19 MR. MASTER: If you wouldn't mind turning to
20 Government Exhibit 609, Mr. Dinet.

21 Q. Take a look at page 6 of 7 of Government Exhibit 609,
22 Mr. Shiflet, and if you wouldn't mind zooming in on Emerging
23 World Pharma, it shows you sold 10,000 shares at 28 cents; is
24 that the sale that you're referring to?

25 A. That is correct.

D3ELLE4

Shiflet - direct

1 Q. What were the proceeds of that sale?

2 A. It looks like \$2,799.95.

3 Q. And at this point, based on your purchase on April 6 and
4 April 7, you had bought, you had accumulated a position of
5 25,000 shares?

6 A. That's correct.

7 Q. So what happened, why did didn't you sell all 25,000?

8 A. I should have but I thought, I still was a believer that in
9 what the newsletter said that there was possible \$20 million in
10 sales and other things and I was just taking money off the
11 table while I still could and probably should have taken it
12 all.

13 Q. I'd like you to take a look at what's been marked as
14 Government Exhibit 607. What is Government Exhibit 607?

15 A. It is my statement as of January 1, 2013.

16 Q. Do you see the last page where your Emerging World Pharma
17 holdings, remaining 15,000 shares were listed?

18 A. Yes.

19 Q. If you could zoom in on that, Mr. Dinet, what's the price
20 of the Emerging World Pharma holdings that you currently have?

21 A. The price is .0003 cents.

22 Q. And what's the value of those holdings?

23 A. The value is \$4.50 for 15,000 shares.

24 MR. MASTER: Nothing further.

25 THE COURT: Mr. Srebnick.

D3ELLE4

Shiflet - direct

1 MR. SREBNICK: Yes, Judge. May it please the Court,
2 good afternoon, everybody.

3 CROSS-EXAMINATION

4 BY MR. SREBNICK:

5 Q. Good afternoon, Mr. Shiflet. My name is Howard Srebnick.

6 We've never spoken before; is that correct?

7 A. That is correct.

8 Q. You told the ladies and gentlemen of the jury you're 45
9 years old and you're in the insurance business?

10 A. That is correct.

11 Q. You're a Nationwide insurance agent?

12 A. That is correct.

13 Q. And what kind of insurance do you sell?

14 A. Property and casualty, mainly automobile and fire home
15 insurance.

16 Q. And I thought you mentioned to the jury in passing that
17 perhaps you have some familiarity with disclaimers based on
18 your business?

19 A. Based on my business and the other boards I've served on
20 and so forth, yes.

21 Q. In particular, as an insurance agent, as you've told us,
22 you sell insurance policies to clients, correct?

23 A. Yes, sir.

24 Q. You're independent or?

25 A. I'm a captive agent.

D3ELLE4

Shiflet - cross

1 Q. You're exclusive with one company?

2 A. Yes.

3 Q. And when in your profession you sell insurance policies to
4 clients, do you have them sign disclaimers?

5 A. Not exactly disclaimers, but we have to have signed
6 uninsured, underinsured forms and so forth, yes.

7 Q. And so, of course, based on your business, you understand
8 how important it is to have your clients be aware of these
9 disclaimers, correct?

10 A. Absolutely.

11 Q. And you encourage them to read the disclaimers before they
12 sign the papers, right?

13 A. Absolutely.

14 Q. And you hold them to those disclaimers when you sell them
15 the insurance policy, correct?

16 A. Correct.

17 Q. So that if they later come to you and have some dispute,
18 your company relies on those disclaimers as part of its
19 ordinary course of business, correct?

20 A. Absolutely, yes.

21 Q. And, of course, it's your job as an insurance agent to sell
22 and make money off of your clients by selling them these
23 insurance policies, correct?

24 A. That is correct.

25 Q. Now, I'd like to ask you a few questions about your

D3ELLE4

Shiflet - cross

1 experience in trading or in the stock market.

2 I think you told us you do have a business degree?

3 A. Yes.

4 Q. And how young when you were you started trading stock or
5 buying and selling stock?

6 A. I was probably 29 or 30.

7 Q. So you had a good ten-plus years of experience before you
8 made a decision to buy stock in EWPI, correct?

9 A. Yes.

10 Q. Now, we saw some records from E*Trade Financial. That's
11 the I guess the company through which you buy and sell stock at
12 the time?

13 A. Yes.

14 Q. Now, when you signed up to have a trading account with
15 E*Trade, they too required that you review or sign or authorize
16 them to act on your behalf through a disclaimer as well,
17 correct?

18 A. That is correct.

19 Q. And that disclaimer through E*Trade explained to you the
20 risks of investing in the stock market, correct?

21 A. Absolutely.

22 Q. And, indeed, do you recall if E*Trade made a special
23 disclaimer with regard to penny stocks because those present an
24 even greater risk?

25 A. They may have. I don't recall it right now, but I'm sure

D3ELLE4

Shiflet - cross

1 they did.

2 Q. And you understand, of course, that penny stocks do present
3 a much greater risk than other stocks, right?

4 A. Absolutely. I'm not arguing that at all.

5 Q. We're not arguing. I just need to ask the questions.

6 And I'd like to then discuss what you understood those
7 risks to be.

8 Did you understand based on the years of trading as
9 well as your education that there is something known as a risk
10 return tradeoff, that if you want big returns, sometimes you
11 got to take very big risks, correct?

12 A. Absolutely.

13 Q. Now, when you signed up with E*Trade, you were engaged in
14 trading beyond just EWPI, correct?

15 A. That is correct.

16 Q. And over the course of your trading career, would it be
17 fair to say you have bought and sold dozens of different
18 stocks?

19 A. That is correct.

20 Q. I'd like to take a look at I think it's Government
21 Exhibit 608, if I could just have a moment. Yes, it is.
22 Government Exhibit 608. It's page 6 that was shown to you
23 earlier, and I'd like to actually zoom in on the center of the
24 document. Perfect.

25 There's in addition to EWPI, it appears you invested

D3ELLE4

Shiflet - cross

1 in a company called AMBAC Financial Group, do you see that
2 there, AMBAC I think I pronounce it?

3 A. Yes.

4 Q. And does it reflect, this document, that on April 12, 2010,
5 at 10:06 in the morning, you purchased 10,000 shares of that
6 company stock at \$1.62 per share?

7 A. Correct.

8 Q. And it looks like at about 12:47, roughly two and a half
9 hours later, you sold those 10,000 shares for \$1.68 per share?

10 A. That is correct.

11 Q. So in two hours and 40 minutes, more or less, you were able
12 to get a profit of roughly \$500 minus the transaction costs?

13 A. That is correct.

14 Q. And E*Trade charged you how much for those transactions?

15 A. They're all different, but probably \$9, \$12, something like
16 that.

17 Q. Would that be known as a day trade?

18 A. Yes.

19 Q. So in the morning, you buy, by lunch time, you've sold it?

20 A. Yes, on that.

21 Q. Did you have any information about that company, AMBAC,
22 what was it that motivated you to buy that company?

23 A. It was on the, I believe, the most traded list the day
24 before or volume. I look at all the top gainers, top losers,
25 top volume, and it was probably a volume. I don't know which

D3ELLE4

Shiflet - cross

1 one, but it was on something that brought my attention to it.

2 Q. Do you know what AMBAC Financial does?

3 A. No, I don't. I can't remember. I'm sure I looked it up at
4 the time, but it's been two years.

5 Q. And had you done any research on AMBAC, about the company
6 itself before you made that investment decision, about the
7 fundamentals of the company?

8 A. Yes. I always, when I look at a stock, and if you'll go to
9 any screen that says most active, you click on it, then it
10 brings up a quote screen that has its financials, its company
11 news, its volume, its average daily volume, average price, all
12 that.

13 If you want to read, I usually read the news, the most
14 recent news, and also look at the financials because they're
15 glaring, how much money they're losing or if they're making
16 money, try to figure out why it's going up or why it's going
17 down.

18 Q. As you sit here today, it's been so long, as to that one
19 stock you don't have a recollection; fair statement?

20 A. No, sir, I do not.

21 Q. Fair enough. Now, you were able to make \$500 in a couple
22 hours or even less than three hours on AMBAC. And were you
23 relying on what you described to the jury earlier as momentum,
24 was that a factor that was important to you?

25 A. Yes.

D3ELLE4

Shiflet - cross

1 Q. And what is this concept of momentum that you're describing
2 for the jury, what do you mean by that?

3 A. Well, once the volume goes up on a particular stock, it
4 gives it momentum and usually it's a feeding frenzy. Other
5 people purchase if it's really good news and makes the stock go
6 up. Then it's same thing going down. When there's bad news
7 and everybody starts selling, the momentum goes crazy downward
8 if there's negative or sometimes --

9 Q. I didn't mean to interrupt you.

10 A. Just negative information or something is misrepresented.

11 Q. Were you trying then in some of your trading strategies to
12 try to predict which way the momentum would carry the stock
13 price?

14 A. Absolutely. That's the goal, right.

15 Q. Is to try to guess which way that stock price is going to
16 go based on what everybody else in the market is doing?

17 A. Well, it's not so much a guess. Hopefully, it's an
18 educated guess where you looked at news and looked at volume
19 and the things that you read are correct and not misrepresented
20 and usually.

21 Q. I take it, did you ever invest in blue chip stocks like
22 Apple?

23 A. I invested a lot in Citibank when it was very high volume
24 at low, and Ford, I've owned Ford. Yes, I've invested in blue
25 chips.

D3ELLE4

Shiflet - cross

1 Q. And even the best of stocks drop for reasons that none of
2 us really know, correct?

3 A. That is correct.

4 Q. Is it fair to say there's really no way to predict which
5 way the momentum will drive the stock, whether up or down,
6 isn't it really fair to say that, none of us can really predict
7 that?

8 A. You can't predict it for seeing the future, but hopefully
9 you can use your tools and the news. And if the news is
10 correct and if the statements are correct, you should be able
11 to determine that it's truly in a positive way or it should be
12 in a negative way, if the information you receive is correct.

13 Q. I'd like to ask you some questions now about the
14 information that you had on EWPI.

15 A. Yes.

16 Q. You told us about a email you received from
17 bestdamnpennystock.com on April 6 you 2010, correct?

18 A. Correct.

19 Q. Before that date, did you have any information about EWPI?

20 A. No, I did not. I had never heard of the stock before then.

21 MR. SREBNICK: If we could just put on the screen then
22 I think it's Government Exhibit 611. I think that's the first
23 one.

24 Q. Do you see that, the email appears to have been sent to you
25 at 2:57 a.m. on April 6, 2010?

D3ELLE4

Shiflet - cross

1 A. That's what it says, yes.

2 Q. And I know it's an impossible thing to remember, but more
3 or less, what time of day would you have read that email, would
4 that have been the first thing you saw when you woke up in the
5 morning?

6 A. Yes. Probably around 6:30 I would have gone through my
7 emails.

8 Q. OK. So the markets open at 9:30?

9 A. Mm-hmm.

10 Q. And so you bought the stock shortly after the market opened
11 at 9:30?

12 A. 9:33 I believe it said.

13 Q. This was the very first time in your whole life you'd ever
14 seen those four letters put together, EWPI?

15 A. That is correct. I probably spent 30 minutes looking at
16 company news, looking at the quote screens of CNBC or one of
17 them, and maybe looked at another one and thought this was,
18 from this email and from what I read company news, which must
19 have correlated, I purchased the stock.

20 Q. Now, had you looked at any of the company's financial
21 statements before making the investment?

22 A. I always, like I said, when you pull up a quote screen,
23 they have the financials that are on there and at the time I
24 trusted them --

25 Q. I understand. I'm asking did you actually look at them?

D3ELLE4

Shiflet - cross

1 A. Yes.

2 Q. Do you remember if EWPI had even posted a financial
3 statement on the internet?

4 A. I can't remember at the time, but most of the time they do.

5 Q. Isn't it true, sir, that EWPI had its most recent postings
6 had shown that up to that date it had zero revenues?

7 A. Right, but that's not uncommon. Yahoo had zero revenues
8 and went through the roof. Many companies have had zero
9 revenues. It's their forward-looking, what's in the tank. So
10 that's not uncommon.

11 Q. So you were relying on the forward-looking statements?

12 A. Correct, and what I was told.

13 Q. And isn't it true, sir, that EWPI had reported up to that
14 date no earnings?

15 A. That is probably correct because that's common with penny
16 stock. They wouldn't be a penny stock if they had many
17 earnings. That is true.

18 Q. Now, did you review the press releases that this company,
19 EWPI, had issued prior to making your investment decision?

20 A. Almost all, and I can't remember, but yes. I'm sure I did
21 because I always look at the press releases. That's the
22 company news usually follows these emails that I get from
23 bestdamnpennystocks. Then you'll go to the news of the company
24 and it's the same information usually.

25 Q. Did you research EWPI on the Pink Sheets website?

D3ELLE4

Shiflet - cross

1 A. No, I didn't.

2 Q. Did you know what the nature of EWPI's business was
3 according to EWPI?

4 A. Yes. It was a pharmaceutical company and drug coming down
5 the pipeline. \$20 million in sales they mentioned in several
6 emails.

7 Q. One of the forward-looking statements in the email was that
8 there was this aspiration, this goal, this projection of
9 \$20 million of annual revenues in the future?

10 A. Correct.

11 Q. But as of the date you made the investment, it was you were
12 aware that EWPI had zero revenues and zero earnings, correct?

13 A. Correct.

14 Q. Did you know anything about the pharmaceutical business
15 generally?

16 A. I was aware of Merck and I was aware of some other,
17 Boehringer, yes, a little bit.

18 Q. Any personal experience in the pharmaceutical business?

19 A. No.

20 Q. Did EWPI, do you remember from the press release it
21 indicated that its business would be somewhere in Africa?

22 A. Yes.

23 Q. Did you know anything about the African economy?

24 A. Just that it's a third world growing, it's the next China,
25 supposedly, and it's a huge population that's untapped.

D3ELLEV4

Shiflet - cross

1 Q. Did you know whether businesses in Africa up to that date
2 were successful or not successful?

3 A. No.

4 Q. Did you know anything about the rules and regulations for
5 distributing pharmaceuticals in Africa?

6 A. No, I did not.

7 Q. Did You do any research or know anything about the
8 political climate in the country of Ghana?

9 A. I know it's very unstable.

10 Q. Mr. Shiflet, do you subscribe to any other newsletters
11 other than the ones you've described for the jury so far?

12 A. Yes, there's a couple others.

13 Q. And do you remember which ones those were at the time in
14 2010?

15 A. I don't remember their names. Maybe if you give me some, I
16 recollect, but I don't.

17 Q. OK. That's all right. Did you, before you made the
18 investment decision, did you try to phone or call the investor
19 relations department at EWPI?

20 A. No, I did not.

21 Q. Did you go to EWPI's website?

22 A. I don't recall going to their website the morning of the
23 purchase. Later I did, I looked at their website.

24 Q. I'd like to now discuss with you the disclaimer that was
25 available to you.

D3ELLE4

Shiflet - cross

1 MR. SREBNICK: If we could publish Government
2 Exhibit 610 towards the third page, if we can put the third
3 page on the screen. That's fabulous. Thank you.

4 Q. Now, the disclaimer informed you and, in fact, stated,
5 "never invest in any stock featured on our site or emails
6 unless you can afford to lose your entire investment," correct?

7 A. Correct.

8 Q. "The disclaimer is to be read and fully understood before
9 using our site or joining our email list," correct?

10 A. Correct.

11 Q. Did you read the disclaimer and fully understand it before
12 using the website?

13 A. Yes.

14 Q. Did you read it and fully understand it before you joined
15 the email list?

16 A. Yes -- no, I didn't see it. There was no disclaimer
17 available to me from the ad I saw on the internet to when I
18 signed on. I didn't get the disclaimer until after I signed
19 in.

20 Q. We'll go through that. I have that to show you.

21 A. I don't remember that.

22 Q. OK, we'll get to that.

23 "Please note well, the bestdamnpennystock.com
24 employees are not registered as an investment adviser in any
25 jurisdiction whatsoever." Did you know that at the time?

D3ELLE4

Shiflet - cross

1 A. Yes, I understand that.

2 Q. Do you see it says their full disclaimer can be read at,
3 and then it gives the website where the full disclaimer is
4 available?

5 A. Yes.

6 Q. Do you remember that being available to you before you made
7 your investment decision?

8 A. I can't say yes or no. I'm not sure. I'm sure it was.
9 I'm not disputing that it was.

10 Q. This is the email that you saw the day that you --

11 A. Right.

12 Q. -- at 6:30 in the morning?

13 A. Right.

14 Q. The email you got gave you the website to go to where you
15 could read the full disclaimer, correct?

16 A. OK.

17 Q. Do you see that it said, "Through the use of this website,
18 viewing or using, you agree to hold bestdamnpennystock.com, its
19 operators, owners, and employees harmless and to completely
20 release them in any all liability," etc., do you see that?

21 A. Yes.

22 Q. Next sentence. Do you remember that the email you got
23 stated, "The information contained herein is based on sources
24 which we believe to be reliable but is not guaranteed by us as
25 being accurate and does not purport to be a complete statement

D3ELLE4

Shiflet - cross

1 or summary of the available data." Do you see that?

2 A. Yes.

3 Q. So you understood that when you received the email, this
4 was just a small amount of information, not the complete
5 picture of this company, EWPI, you understood that?

6 A. Yes, I understood.

7 Q. OK. Next sentence, "Bestdamnpennystock affiliates may from
8 time to time have a position in the securities mentioned herein
9 and may increase or decrease such positions without notice."

10 Do you remember that?

11 A. Yes.

12 Q. That meant, of course, that the owners of
13 bestdamnpennystocks could buy or sell the stock at any time,
14 correct?

15 A. Correct.

16 Q. "Bestdamnpennystocks owners may or may not hold positions
17 in the companies that are profiled. It should be assumed that
18 the owners of bestdamnpennystocks own positions in companies
19 profiled and may buy or sell at any time before, during, or
20 after investor relations services." Do you see that?

21 A. Yes.

22 Q. And next sentence, "Bestdamnpennystocks.com affiliates and
23 friends and family may have a position in such securities." Do
24 you see that?

25 A. Yes.

D3ELLE4

Shiflet - cross

1 Q. And do you see that's letting you know that
2 bestdamnpennystocks may be trading on this information, right?

3 A. Correct.

4 Q. "The position may have been acquired prior to the
5 publication of any website information or email alert. You
6 should be also aware that the aforementioned parties do have
7 the right to sell their positions at any time without further
8 notification." You understood that at the time?

9 A. I understand that.

10 Q. "Any opinions expressed are subject to change without
11 notice." You knew that, right?

12 A. Yes.

13 Q. "Bestdamnpennystocks.com encourages readers and investors
14 to supplement the information in these reports with independent
15 research and other professional advice."

16 Did you seek any other professional advice between
17 6:30 in the morning and 9:30 before you made your investment
18 decision?

19 A. Just looked at the company news. But as far as calling a
20 broker, no, I did not.

21 Q. Did -- you consulted with no one else; is that a fair
22 statement?

23 A. That's a fair statement.

24 Q. "All information on featured companies is provided by the
25 company's profile or is available from public sources, and

D3ELLEV4

Shiflet - cross

1 bestdamnpennystocks makes no representations, warranties, or
2 guarantees as to the accuracy or completeness of the disclosure
3 by the profiled companies." Do you see that?

4 A. Yes.

5 Q. So bestdamnpennystocks was letting you know and did you
6 understand that they were gathering information from the
7 company and publishing it with whatever other forward-looking
8 statements they offer, correct?

9 A. Correct.

10 Q. And a forward-looking statement, in case that's a phrase
11 that may sound confusing, it's a statement of looking forward,
12 a predictive type of statement, correct?

13 A. Correct.

14 Q. Looking into the future, right, trying to surmise which way
15 a stock price will go, whether it be up or down, correct?

16 A. That is correct.

17 Q. Four lines from the bottom, "Bestdamnpennystocks.com
18 expects to be compensated \$250,000 cash from a third party,
19 Capital Investment Group, for an EWPI investor relations
20 service." Do you remember reading that at the time?

21 A. No, I don't remember reading that at the time, but I have
22 read it since then.

23 Q. That's an important piece of information, wouldn't you say,
24 that bestdamnpennystocks.com is actually being paid to promote
25 this company?

D3ELLE4

Shiflet - cross

1 A. Yes, it is. Hopefully, they are promoting it to go higher
2 and that their legitimate goal is like mine. That's when I
3 read this, that they are promoting a stock and not hopefully
4 trying to get out of it.

5 Q. Well, they told you they might try to get out of it, didn't
6 they?

7 A. They might, but that's definitely not their intention in
8 this letter.

9 Q. Do you see three or four times they told you that as
10 they're promoting the stock, they might take advantage of the
11 increase in price and sell at the same time, right?

12 A. Right, and I wish they would have said 94 cents is our
13 getting out instead of two to \$3, as it states here.

14 Q. They actually did. They told you earlier on they might
15 sell before it gets to the top. Right?

16 A. Well, in the disclaimer they might, but in the newsletter
17 they feel like they would go two to three on the same day it
18 dropped.

19 Q. Well, the newsletter is in the same document as this,
20 right?

21 A. Yes.

22 Q. OK. And so you were aware that this advertisement was paid
23 for by somebody who was telling you that he or she might sell
24 the stock, indeed, would sell the stock as it went up, right?

25 A. That is correct, but they do not correlate very well.

D3ELLE4

Shiflet - cross

1 Q. Do you see the next sentence says, "This is not a
2 solicitation to buy or sell any securities. Any claims or
3 statements should be deemed apocryphal." Do you see it says
4 that there?

5 A. Yes.

6 Q. And apocryphal means basically don't rely on it, not to be
7 relied upon, correct?

8 A. Yes.

9 Q. "Bestdamnpennystocks, nor any of its affiliates, they're
10 not registered investment advisers or broker dealers."

11 And that completed the disclaimer you got in the email
12 that morning?

13 A. Correct.

14 Q. Without going through it again, do you remember that exact
15 same disclaimer was provided in the next email, Government
16 Exhibit 611?

17 A. Yes.

18 Q. Let's not read it again, but if we can publish it, please.

19 A. Yes.

20 Q. That disclaimer was the one that came with the email. But,
21 indeed, when you registered for bestdamnpennystocks.com, you
22 were provided access to an even more expansive disclaimer, even
23 more information, when you decided to sign up for
24 bestdamnpennystocks.com.

25 Do you remember that?

D3ELLE4

Shiflet - cross

1 A. I don't remember that, no, but I'm sure. I'm not disputing
2 it.

3 MR. SREBNICK: If we could, I offer, or, if it's not
4 already in evidence, offer Government Exhibit 708.

5 MR. MASTER: No objection.

6 THE COURT: 708 is in evidence.

7 (Government's Exhibit 708 received in evidence)

8 MR. SREBNICK: I think it's the web page, if I'm not
9 mistaken, of bestdamnpennystocks.com, and if we could publish
10 it.

11 Q. OK. And do you remember this looking like the web page for
12 bestdamnpennystocks?

13 A. Yes, I do remember that now.

14 Q. Now, bestdamnpennystocks doesn't charge a fee to subscribe,
15 does it?

16 A. That is my understanding, no.

17 Q. OK. And if we scroll down to the next page, free to sign
18 up, you see that?

19 A. Yes.

20 MR. SREBNICK: Keep going down. Thank you. Who's got
21 it? Jen has it. Great. If you go down, they show some of
22 their picks. And then we get to keep scrolling. OK. I think
23 you passed it. Got to go slow. My eyes aren't great.

24 Q. "Be sure to completely read our legal disclaimer before
25 signing up or proceeding to the rest of our site." Do you

D3ELLE4

Shiflet - cross

1 remember that?

2 A. I'm sure I looked at it. I don't remember it.

3 Q. OK and --

4 THE COURT: You don't remember it now?

5 THE WITNESS: I don't remember seeing it when I signed
6 up.

7 THE COURT: OK.

8 THE WITNESS: But I'm sure it was there.

9 Q. OK. And did you, did you make a conscious decision not to
10 read it or you just don't remember?

11 A. I just don't remember. I don't. To be honest with you, on
12 whether it's my cell phone or whatever, the disclaimers, sign
13 up for software, which are sometimes ten, 20 pages, I don't
14 read them, necessarily, unless it's -- I will start now, I can
15 tell you. Anything that has the word apocryphal.

16 Q. Probably worth looking it up in the dictionary, right?

17 A. I can tell you for sure I've never had a client sign
18 anything, a disclaimer that says whatever preceded this was a
19 joke and should not be taken seriously.

20 Q. When you decided not to read it, did you understand of
21 course that bestdamnpennystocks, I think the very first
22 question you were asked, they're an advertising company?

23 A. They are.

24 Q. Did you understand? That's all I'm asking. Did you
25 understand it at the time -- I think it was the very first

D3ELLE4

Shiflet - cross

1 question by the prosecutor about this subject -- that this was
2 an advertisement?

3 MR. MASTER: Objection. Misstatements the testimony.

4 THE COURT: Sustained.

5 Q. You understood this was an advertisement that was being
6 paid for by somebody who held the stock, correct?

7 A. It was now I do. At the time I thought it was someone who
8 was trying to sell their newsletter based on success because it
9 says he is tired of his 800 percent returns and how horrible.
10 He wanted to be much more.

11 I had no idea that it was a marketing tool at the
12 time. I thought it was somebody generally trying to get in the
13 investment.

14 Q. There's no fee for it, so they're not charging you a fee.
15 The only way, they told you the way they make money is they
16 charge to promote the stock?

17 A. I'm not into their business. From the way it reads, they
18 become successful by having a track record. It also says in
19 here that if this EWPI does not double, that he will stop this.

20 So when I look back, it's all full of rhetoric and
21 things that should not. It's apocryphal, whatever you call it.

22 Q. Fair enough. Now, the stock did do quite well on the day,
23 on the change from April 5 to April 6, the stock did go up as
24 bestdamnpennystocks predicted, right?

25 A. What day?

D3ELLE4

Shiflet - cross

1 Q. It closed higher?

2 A. What day did I purchase?

3 Q. According to -- let me show you.

4 A. I thought it went down from the 5th to the 6th. Just
5 technicality on the days.

6 Q. Let's take a look at Government Exhibit 105-52.

7 A. OK.

8 Q. You haven't seen that yet. I'm going to publish it for
9 you, 105-52. I think we're going to need to enlarge like half
10 of it so we can all see it. OK. This is already in evidence
11 and that's perfect for now.

12 Now, you let me tell what you it is. If we go to the
13 top, Michael, just so the witness who hasn't seen this before
14 has a chance, this is already in evidence. And I think without
15 dispute, this is what the government presented earlier in the
16 case, and it just tracks the last stock price of the day and
17 the volume for particular days. OK?

18 A. I understand.

19 Q. Now, if we start in January, you see a very -- the stock
20 price was 16 cents back in January of 2010 with a volume of 541
21 shares?

22 A. Yes.

23 Q. OK. Now, you had said that you track what, the volume, the
24 momentum of volume of a stock?

25 A. That is correct.

D3ELLE4

Shiflet - cross

1 Q. Do you see that on March 22, 2010, about two weeks or so
2 before you bought the stock, the stock had reached 66 cents as
3 its last price on a volume of two and a half million shares?

4 A. Correct.

5 (Continued on next page)

D3erlev5

Shiflet - cross

1 MR. SREBNICK: If we can scroll down from that date.
2 Perfect.

3 Q. Before that, there had never been a day where the stock had
4 even traded a hundred thousand shares, before March 22 of 2010,
5 in that year, correct?

6 A. Correct.

7 Q. The volume then started declining all the way until
8 basically April 5th, correct?

9 A. Yes, the day that this newsletter was sent out, and the
10 volume went through the roof.

11 Q. On the day you bought?

12 A. Yes.

13 Q. Was the date everybody bought?

14 A. Right.

15 Q. It appears a lot more people bought?

16 A. Right.

17 Q. It was the highest volume of that stock in that year to
18 date, correct?

19 A. Right. And it jumped the day before.

20 Q. The stock price, if you can track what the last price is,
21 the stock price had been somewhere in the 40s, do you see that?
22 Starting in March 24th, it was 38 cents, then 44 cents, do you
23 see that?

24 A. Yes.

25 Q. Then 46, 42, 43, 43, 48. Are you following along?

D3erlev5

Shiflet - cross

1 A. Yes.

2 Q. Then on April 5th it increased to 62 cents as the last
3 price. Let's not move it so we all stay focused. And it
4 closes the next day at 71 cents or the last price, whatever
5 that means. Do you see that?

6 A. Yes.

7 Q. The stock price indeed did go up between the 5th and the
8 6th?

9 A. Yes, in correlation with this newsletter.

10 Q. Yes. A lot of people bought the stock. I guess there was
11 increased demand, correct?

12 A. Mm-hm.

13 Q. The volume was much higher, the stock price went up,
14 correct?

15 A. Right.

16 Q. The next day the last price was 49 cents on a million 7 in
17 trading, right?

18 A. Mm-hm.

19 THE COURT: That's a yes?

20 A. Yes. I'm sorry.

21 Q. A million 7 shares, 1,700,000 shares, still represents the
22 third highest volume of shares traded for that year in that
23 stock, correct?

24 A. Correct.

25 Q. With all that volume, the stock price still came down,

D3erlev5

Shiflet - cross

1 correct?

2 A. Correct.

3 Q. The next day, April 8th, another 1,100,000 shares, the
4 stock price ticked up to 53 cents, do you see that?

5 A. Correct.

6 MR. SREBNICK: If we keep scrolling down. Please stop
7 there.

8 Q. Then the stock price hovered right around, let's say, the
9 50 cent range, 49 cents, 53 cents, 55 cents, do you see that?

10 A. Yes.

11 Q. On volume either over a million shares or 700,000 shares,
12 but during that time period it's hundreds of thousands of
13 shares of stock trading, right?

14 A. Correct.

15 Q. Mr. Shiflet, did you have a margin account for this trading
16 activity?

17 A. No, I did not. It was a margin account, but I did not have
18 any margin. Every account is a margin account, I guess. But I
19 had capital to cover. I was not risking borrowed funds, if
20 that's what you are asking.

21 Q. I couldn't tell from the document. That's why I asked the
22 question.

23 A. Yes.

24 Q. Thank you. You were trying to foresee the momentum, is
25 what I think you told us. You were trading on momentum of the

D3erlev5

Shiflet - cross

1 stock?

2 A. Momentum and positive news that I had received.

3 Q. From April 6th to April 7th the stock price came down,
4 correct?

5 A. Yes.

6 Q. For whatever reason, it was your expectation that the stock
7 price would eventually go back up?

8 A. According to this newsletter, the next newsletter I
9 received they said the short position was impossible or
10 whatever, and it was going to have to be covered, and it would
11 go back up because, whatever, there was no reason for the
12 excessive shorts. You can read it, the newsletter.

13 Q. Short position, for those of us that are not active
14 traders, does that mean people that are selling the stock
15 without even owning the stock?

16 A. They can own it or not, but most times it's an uncovered
17 short, yes, they do not own it.

18 Q. Uncovered short means?

19 A. They are betting the stock goes down.

20 Q. So Best Damn Penny Stocks provided information that there
21 were a lot of people betting that the stock would go down?

22 A. Right.

23 Q. You had people betting on both sides of the stock, people
24 betting it was going down and Best Damn Penny Stocks providing
25 information about why it could go up?

D3erlev5

Shiflet - cross

1 A. Correct.

2 Q. I'd like to fast-forward now to the next month, May 20,
3 2010. That was a day I think you told us when you decided to
4 take some money off the table.

5 A. That is correct.

6 Q. When you say take money off the table, is that sort of an
7 allusion or a reference to like a gambling table?

8 A. Or an investment. You take money off the market.

9 Q. Was there any other news that you had received about the
10 company on May 20, 2010?

11 A. What had happened, I think they had -- I don't remember any
12 emails after, and they had stopped coverage maybe of it. I
13 understand when they stop coverage, that it is usually over.
14 The company news may have stopped. I decided that it was time
15 to pull some off, find another investment maybe.

16 Q. You kept some of your stock in your portfolio, meaning you
17 didn't sell all of EWPI stock, right?

18 A. No, I did not sell it all.

19 Q. Did you do any other research after April 7 to May 20
20 regarding EWPI?

21 A. I remember, yes, I looked it up every day to see what the
22 company news was, what was reported. I can't remember, but
23 yes, I looked every day, I guarantee you, at every one of my
24 stocks in my portfolio to see if there was something exciting
25 or negative.

D3erlev5

Shiflet - cross

1 Q. Do you recall a press release coming out from EWPI
2 indicating that there had been some discussions with the food
3 and drug board of Ghana and that test runs expected to start in
4 May had been pushed back 45 days?

5 A. I do believe I remember that, yes. 45 days is not
6 uncommon. If that was true, that is not necessarily bad news,
7 if there were such.

8 Q. Mr. Shiflet, when you signed up for BestDamnPenny-
9 Stocks.com, do you recall that you were advised by BestDamn-
10 PennyStocks.com to seek the advice of other professionals
11 before making an investment decision?

12 A. Yes. That's on most of them.

13 THE COURT: What was that?

14 A. That's on most of the newsletters. That's another
15 disclaimer.

16 Q. Mr. Shiflet, at any point after the morning of April 6th,
17 after 9:30 in the morning, did you thereafter take a look at
18 the public filings of EWPI available at the OTC Market's
19 website or the Pink Sheets website?

20 A. Maybe in 2011 I looked at the SEC filings. I can't
21 remember. I looked at several, a lot of companies.

22 Q. Did you ever take a look at the balance sheet as it was
23 posted by EWPI on the Pink Sheets website?

24 A. I can't remember that certain company. I have looked at a
25 lot of SEC filings.

D3erlev5

Shiflet - cross

1 MR. SREBNICK: If I could have a moment?

2 THE COURT: Yes.

3 MR. SREBNICK: Your Honor, those are all the questions
4 I have. Thank you.

5 THE COURT: Thank you very much. Mr. Master?

6 MR. MASTER: A few questions on redirect.

7 **REDIRECT EXAMINATION**

8 BY MR. MASTER:

9 Q. Mr. Shiflet, you were asked some questions about your
10 experience with disclaimers as an insurance agent, do you
11 remember that?

12 A. Yes.

13 Q. You understand that even though there are disclaimers in
14 the policies that you sell, are you allowed to lie to people to
15 trick them into buying insurance policies?

16 A. Absolutely not. That would not last very long.

17 Q. You could get into a lot of trouble for that, right?

18 A. Absolutely.

19 Q. You can't misrepresent a policy and think that a disclaimer
20 would save you, right?

21 A. That is correct.

22 Q. You can't misrepresent the risk of the insurance that you
23 are selling and think that a disclaimer could save you?

24 A. Correct.

25 Q. You can't misrepresent your intentions in selling insurance

D3erlev5

Shiflet - redirect

1 and think that a disclaimer would save you?

2 A. No, I can't stay in business very long doing that,
3 absolutely not.

4 Q. Because you could get in a lot of trouble for that?

5 A. A lot of trouble.

6 Q. The disclaimer that was read to you line by line by Mr.
7 Srebnick, that wasn't a disclaimer that you read line by line
8 and fully understood before making your investment decision,
9 right?

10 A. That is true.

11 Q. It's only going over it afterwards, after you had lost all
12 that money, that you went back and looked at what had been
13 represented in the disclaimer?

14 A. Correct.

15 Q. Even after having read the disclaimer, let me ask you, sir,
16 do you see someone over there, a woman? Have you ever seen her
17 before?

18 A. No, sir, I have not.

19 Q. Donna Levy, do you know that name?

20 A. No, I do not. Sorry.

21 MR. MASTER: I'd like to pull up Government Exhibit
22 700-1T, page 2.

23 MR. SREBNICK: I have an objection to that exhibit
24 with this witness.

25 THE COURT: It's overruled.

D3erlev5

Shiflet - redirect

1 Q. Was it disclosed to you and did you understand from the
2 disclaimer -- by the way, this was a call on April 5, 2010, at
3 4 p.m. Was it disclosed to you in that disclaimer, did you
4 understand from that disclaimer, that Donna Levy was
5 coordinating the sending out of stock purchase recommendations
6 concerning Emerging World Pharma? Do you see where it says
7 "every single person is going out full blast tonight"?

8 MR. SREBNICK: Objection. Leading.

9 THE COURT: Overruled. Did you know that?

10 A. No, sir, I did not.

11 Q. Did you have any awareness that there was a coordinated
12 effort among penny stock news letters to promote Emerging World
13 Pharma on the very day that you got that stock purchase
14 recommendation?

15 A. At the time absolutely not. I had no idea.

16 Q. Had you known that, would that have affected your
17 investment decision?

18 A. Absolutely.

19 Q. The next day were you on a call or were you aware of a call
20 on April 6, 2010, involving Donna Levy?

21 A. No, I was not.

22 Q. If you could turn to Government Exhibit 700-2T. Mr.
23 Shiflet, were you clued in at all to conversations Donna Levy
24 was having regarding a coordinated effort?

25 MR. SREBNICK: Standing objection to this, Judge.

D3erlev5

Shiflet - redirect

1 THE COURT: OK. Overruled.

2 A. No, I was not.

3 Q. Would it have affected your investment decision had you
4 known that Eric Cusimano had a high spam score in the emails
5 that he was sending? You haven't seen this before, have you,
6 sir?

7 A. No, I have not.

8 Q. Would it have affected your investment decision had you
9 known that Eric Cusimano, the person who is listed on that Best
10 Damn Penny Stock website, had a high spam score?

11 THE COURT: Do you even know what it is?

12 A. I'm not sure I understand what a spam score is. I
13 understand the word "spam" as an email, but I'm not sure what a
14 spam score is.

15 MR. MASTER: Turn to the second page, Mr. Dinet.

16 Q. Would it have affected your investment decision had you
17 known that Donna Levy and others were copying and pasting each
18 other's stock purchase recommendations concerning Emerging
19 World Pharma, in other words, that all of these were cut and
20 pasted from each other?

21 A. If I would have known the details, yes, that would have
22 raised some red flags.

23 Q. If you turn to page 5 of this. Would it have affected your
24 investment decision had you known that Eric Cusimano was
25 spending a hundred thousand dollars a month to advertise on the

D3erlev5

Shiflet - redirect

1 Internet so that people like you could sign up for BestDamn-
2 PennyStocks.com?

3 A. Yes, that would have. A hundred thousand a month seems
4 like a lot, and I would have wanted to know the motive or how
5 the return would -- questions would have been --

6 Q. Or 200,000 a month.

7 MR. MASTER: Nothing further, your Honor.

8 MR. SREBNICK: May I ask two questions from right
9 here?

10 THE COURT: Yes.

11 **RECROSS-EXAMINATION**

12 BY MR. SREBNICK:

13 Q. You knew that Best Damn Penny Stocks was getting paid
14 \$250,000 to promote this stock on one single day? You knew
15 that?

16 A. No, I didn't realize one day. I thought that was part of
17 the disclaimer that came with all the emails. I was not aware
18 of just one day 250. I thought that was their fee for
19 promoting it over a year or two years.

20 Q. Where did you get that from?

21 A. Because I thought it was part of the normal disclaimer. I
22 did not realize it was one day.

23 Q. You woke up at 6:30 in the morning, the document told you
24 they were being paid \$250,000, and within 2½ hours you buy the
25 stock, right?

D3erlev5

Shiflet - recross

1 A. Correct.

2 MR. SREBNICK: I have nothing further.

3 THE COURT: You are excused. Thank you very much.

4 (Witness excused)

5 THE COURT: Ladies and gentlemen, why don't we take
6 our afternoon recess.

7 (Recess)

8 MR. MASTER: Your Honor, I want to publish one item to
9 the jury. It's being admitted subject to connection. It is
10 Government Exhibit 605-7D-1. It is a copy of an email from
11 BestDamnPennyStocks.com concerning EWPI dated 2010, April 6th.
12 It includes a list of recipients of the email.

13 MR. SREBNICK: I'm sorry?

14 THE COURT: A list of recipients of the email, is that
15 it?

16 MR. MASTER: Yes.

17 MR. SREBNICK: No objection.

18 THE COURT: What is the number, Mr. Master?

19 MR. MASTER: 605-7D-1.

20 THE COURT: It is in evidence.

21 (Government's Exhibit 605-7D-1 received in evidence)

22 THE COURT: All right, Mr. Master.

23 MR. MASTER: At this time the government calls Jeffrey
24 Eastman.

25 JEFFREY EASTMAN

D3erlev5

Eastman - direct

1 THE WITNESS: Jeffrey Scott Eastman. Eastman is
2 E-A-S-T-M-A-N.

3 THE COURT: Please sit down, Mr. Eastman, make
4 yourself comfortable. Pull yourself right up to the
5 microphone.

6 Mr. Master.

7 MR. MASTER: Thank you, your Honor.

8 DIRECT EXAMINATION

9 BY MR. MASTER:

10 Q. Where are you employed, sir?

11 A. I'm employed by the Department of Homeland Security
12 Investigations in California.

13 Q. What is your title?

14 A. I'm a special agent.

15 Q. For how long have you been a special agent with Homeland
16 Security Investigations?

17 A. I've been a special agent with what is now Homeland
18 Security Investigations since 2001. Before that, it was called
19 U.S. Customs. And before that, I was a special agent with the
20 U.S. State Department Diplomatic Security Service starting in
21 1997.

22 Q. Where did you work at the diplomatic security service?

23 A. I worked in New York, San Francisco, Los Angeles, and at
24 embassies overseas, such as in Cairo, Kathmandu, Algiers,
25 Algeria.

D3erlev5

Eastman - direct

1 Q. Did there come a time when you were asked to help execute a
2 search warrant at the residence of an individual named Joseph
3 Saranello?

4 A. Yes.

5 Q. I would like to direct your attention to March 16, 2010.
6 What happened on that date?

7 A. On March 16th, 2010, I traveled to Colorado and I
8 participated in the execution of a federal search warrant on
9 the residence of a Joseph Saranello in Colorado.

10 Q. What was the legal basis for the search warrant?

11 A. The legal basis was to obtain evidence of international
12 money laundering and securities fraud.

13 Q. There were a number of agents on the search?

14 A. Yes, there were a number of IRS agents and ICE agents.

15 Q. ICE is yet another predecessor name for Homeland Security?

16 A. Yes. It's a long story. Customs merged after 9/11 with
17 immigration. In 2001 it became ICE. And recently ICE had a
18 name change to Homeland Security Investigations. Really one
19 and the same agency, just with a name change.

20 Q. Did there come a time when you actually executed the search
21 of Joseph Saranello's residence?

22 A. Yes, we did.

23 Q. There were a number of documents that you recovered from
24 the search?

25 A. Yes.

D3erlev5

Eastman - direct

1 Q. In preparation for your testimony here today, did you have
2 the opportunity to look at what's been marked as Government
3 Exhibits 500-1 to 500-22?

4 A. Yes.

5 Q. I think there is a Redweld, a binder, in front of you. If
6 you wouldn't mind taking a look at the contents of that. That
7 should contain 500-1 to 500-22.

8 A. Yes, it does.

9 Q. Do you recognize those documents?

10 A. Yes, I do.

11 Q. What are they?

12 A. These are documents recovered from the residence of Joseph
13 Saranello in Colorado.

14 Q. I what date?

15 A. I believe the date was March 15, 2010.

16 Q. Prior to executing the search warrant, what, if any,
17 advance notice did you give Joseph Saranello that he was a
18 target of a federal investigation?

19 A. We didn't give him any notice at all.

20 Q. What happened to the documents after they were seized from
21 Joseph Saranello's residence?

22 A. The documents were boxed up by an ICE agent in Colorado and
23 they were mailed to my office in Orange County, California.

24 Q. What did you have done with the documents once they were at
25 your office?

D3erlev5

Eastman - direct

1 A. We took them from our evidence room at one point over to
2 the U.S. Attorney's office in Santa Ana, California, where they
3 were scanned and given these Bates numbers by Xerox.

4 Q. What's a Bates number?

5 A. We have tracking documents. The bottom of this document,
6 for example, might say Saranello 008385 as a reference point.

7 Q. Each page has a unique reference number?

8 A. Yes, each page has a unique identifying Bates number.

9 Q. With the exception of 500-19, are each of the documents in
10 that Redweld documents that are Bates numbered from the
11 Saranello search?

12 A. Do you want me to go through the whole Redweld?

13 Q. Yes.

14 A. I see Bates numbers on all the pages here.

15 Q. If you could look at what is Government Exhibit 500-19.
16 What is Government Exhibit 500-19?

17 A. It is a torn piece of paper.

18 Q. Have you previously seen that as Bates numbered from the
19 Saranello search?

20 A. Yes, I have.

21 Q. Do you recognize that as the original of a torn page?

22 A. It's the original, yes.

23 MR. MASTER: Your Honor, at this time the government
24 offers Government Exhibits 500-1 to 500-22.

25 MR. SHARGEL: May I see a copy, your Honor, or the

D3erlev5

Eastman - direct

1 original?

2 THE COURT: Certainly.

3 MR. SHARGEL: May I have one moment with Mr. Master?

4 THE COURT: Yes.

5 MR. SHARGEL: No objection.

6 THE COURT: 500-1 through 500-22 are received in
7 evidence.

8 (Government's Exhibits 500-1 through 22 received in
9 evidence)

10 MR. MASTER: May I publish the exhibits briefly.

11 THE COURT: Do you want to publish them?

12 MR. MASTER: First may we publish 500-1 to the jury?

13 THE COURT: Yes.

14 Q. Mr. Eastman, you can look on on the screen or at the
15 document in front of you. This is a document that has a tab
16 "Summary."

17 MR. MASTER: If you could turn to the next page, Mr.
18 Dinet.

19 Q. It states "Individual account summary." I'm going to ask
20 you some questions about this document. This was found at Mr.
21 Saranello's home, correct?

22 A. That's correct.

23 Q. Based on your investigation, did there come a time when you
24 came to learn that each of these names was associated with a
25 Panamanian bank account?

D3erlev5

Eastman - direct

1 A. That's correct. The majority, if not all, were associated
2 with Panamanian bank accounts.

3 Q. Those Panamanian bank accounts include a bank account in
4 the name of Bluefin Financial Group?

5 A. Yes, that was one of them.

6 Q. And a Panamanian bank account in the name of Udino
7 Investments?

8 A. Yes, that was another account in Panama.

9 Q. And an account in the name of Copperwood Foundation?

10 A. Yes.

11 Q. What did you and other law enforcement agents do when you
12 identified all of these Panamanian bank accounts?

13 A. Myself and other ICE law enforcement agents obtained a
14 seizure warrant for various bank accounts maintained at banks
15 in Panama. Most of these are listed here, the names of the
16 various accounts.

17 Q. Can you explain for the members of the jury what a seizure
18 warrant is.

19 A. A seizure warrant is a civil warrant to seize whatever is
20 in an account. Usually, you put the name of the account on it
21 and the account number, sometimes just the account number. You
22 have to have probable cause why you are doing this. Then the
23 account is seized and maintained by the government until it is
24 adjudicated civilly.

25 Q. Where were these accounts located, which banks?

D3erlev5

Eastman - direct

1 A. Chiefly Capital Bank in Panama. Before that, some of these
2 accounts had been in Multibank, and they were transferred over
3 to Capital Bank.

4 Q. What happened a couple of days after you executed the
5 search warrant with respect to Joseph Saranello?

6 A. We arrested him a couple of days later.

7 Q. Prior to that had Mr. Saranello been cooperating with the
8 government?

9 A. No.

10 Q. After his arrest, what did he start to do?

11 A. He very quickly started to cooperate with the government.

12 Q. In connection with his cooperation, without saying any of
13 the substance of what he told you, did he provide certain
14 information about individuals he had worked with?

15 A. Yes. He gave us names of different individuals he worked
16 with and volunteered to make phonecalls to them.

17 Q. I'm going to get to that in a moment. Before I do, let me
18 flip through a couple of additional documents from the seizure
19 warrant. I'm sorry. From the search warrant.

20 MR. MASTER: If you wouldn't mind, Mr. Dinot, turning
21 to 500-2 quickly, and the second page.

22 Q. Do you recognize this as an account application in the name
23 of Udino Investments?

24 A. Yes.

25 Q. Do you recognize that handwriting?

D3erlev5

Eastman - direct

1 A. Yes, I do.

2 Q. Whose handwriting?

3 A. It's the handwriting of Joseph Saranello.

4 Q. If you wouldn't mind turning to 500-4. And if you wouldn't
5 mind turning to the fourth page. I'm sorry. The next page.
6 Do you see there is an individual named Christian Burnett? Do
7 you see that name?

8 A. Yes.

9 Q. That was also a document that was seized from Joseph
10 Saranello's home?

11 A. Yes.

12 Q. Now turn to 500-5. This is also a document seized from
13 Joseph Saranello's home?

14 A. Yes, it is.

15 Q. It's dated September 9, 2009, do you see that?

16 A. Yes, I do.

17 Q. It's between Bluefin Financial Group and Veradam Telecom
18 Inc.?

19 A. Yes.

20 Q. Do you see where it relates to a secured promissory note
21 issued to it by a company called Voice Networkx?

22 A. Yes.

23 Q. Now 500-6. Do you see there there are wire instructions
24 for a Bluefin Financial Group? You stated that Capital Bank,
25 Inc. -- where is that bank located?

D3erlev5

Eastman - direct

1 A. It's located in Panama. I don't remember the exact city,
2 but it is located in Panama.

3 Q. You understood that all the wires that go to Capital Bank
4 in Panama are routed through HSBC Bank in New York, New York?

5 A. The majority of them were. They might have changed at some
6 point, but the majority were going through HSBC Bank in New
7 York, yes.

8 Q. Now if you could turn to 500-10. Was this found in Joseph
9 Saranello's home?

10 A. Yes.

11 Q. This was on the search that you executed in March of 2010?

12 A. Yes, it was.

13 Q. Now I'd like you to take a look quickly at Government
14 Exhibits 500-11, 500-12, 500-13, 500-14, 500-15, 500-16,
15 500-17, 500-18. Without telling the jury what your
16 interpretation of these documents are, were documents of this
17 nature, with dates and this type of writing, found in multiple
18 locations in Mr. Saranello's home?

19 A. Yes.

20 Q. Then take a brief look at Government Exhibit 500-19. Do
21 you have that in front of you or did I take it? Do you have
22 the original in front of you?

23 A. No. I think you took the original back.

24 Q. Yes. Here it is.

25 MR. MASTER: If I could publish that to the jury?

D3erlev5

Eastman - direct

1 THE COURT: Yes, you may.

2 Q. On page 1 it says "Stock Purchase Agree." Do you see that?
3 It relates, at least from what you can see, to \$1,043,000?

4 A. Yes.

5 Q. If you could turn to the last page. It has to do with a
6 seller, Udino Investments, Inc., and a purchaser, Peter
7 Veugler. Do you see that?

8 A. That's correct, yes, I see that.

9 Q. Now Government Exhibit 500-21. Was this document also
10 found in Joseph Saranello's home in March of 2010?

11 A. Yes.

12 Q. You had no prior investigation of an individual by the name
13 of David Levy at that time, correct?

14 A. No.

15 Q. This is a confidential memorandum dated September 7, 2009,
16 to Copperwood Foundation and cc Bluefin Financial Group, cc Mr.
17 David Levy, from a William Aul.

18 A. That's correct.

19 Q. It relates to a potential merger with Greenway Design Group
20 LLC, do you see that?

21 A. Yes, I do.

22 Q. Did you have any pending investigation of Greenway Design
23 Group LLC?

24 A. No. No, I do not.

25 Q. It's signed by --

D3erlev5

Eastman - direct

1 MR. MASTER: Mr. Dinet, if you could go down.

2 Q. Do you recognize that signature?

3 A. Oh, yes. That's the signature of Joseph Saranello, as it
4 looks like "Federico Rodriguez."

5 Q. Was that one of the identities he assumed?

6 A. That was one of the many Panamanian nominee identities that
7 he was assuming.

8 Q. Then Government Exhibit 500-22. Was that also found in the
9 home at the time that you executed the search warrant?

10 A. Yes.

11 Q. You mentioned earlier that you had executed some seizure
12 warrants with respect to Panamanian bank accounts, correct?

13 A. Yes.

14 Q. And that some other agents also working on this broader
15 investigation also executed seizure warrants, correct?

16 A. That's correct.

17 Q. Did there come a time when you also obtained what is known
18 as documents under a Mutual Legal Assistance Treaty?

19 A. Yes.

20 Q. Also known as an MLAT?

21 A. Yes, we did.

22 Q. Did those include bank records for certain bank accounts at
23 Capital Bank in Panama?

24 A. Yes.

25 MR. MASTER: Government Exhibits 502-1, 502-2, and

1 502-3 have previously been admitted by stipulation of the
2 parties. I am now going to read another stipulation,
3 Government Exhibit S8. It relates to Government Exhibits
4 503-1, 503-2, and 503-3. It contains the customary language in
5 front and states:

6 If called as a witness, Dena Millman would testify as
7 follows:

8 1. Ms. Millman is a certified court interpreter and
9 translator with more than 38 years of experience having been
10 certified by the administrative office of the United States
11 courts. As such, she is fully qualified as an interpreter and
12 translator of the Spanish language into the English language
13 and vice versa. She has testified as a Spanish language
14 interpreter and translator on numerous occasions.

15 Ms. Millman reviewed Government Exhibits 502-1, 502-2,
16 and 502-3 and translated those portions of such exhibits that
17 were written in the Spanish language into the English language.
18 Government Exhibits 503-1, 503-2, and 503-3 contain the Spanish
19 language portions of Government Exhibits 502-1, 502-2, and
20 502-3 respectively and the translated portions of such
21 exhibits.

22 It is further stipulated and agreed that Government
23 Exhibits 503-1, 503-2, and 503-3 may be received in evidence at
24 trial and that this stipulation may be received in evidence at
25 trial.

1 THE COURT: Received in evidence.

2 (Government's Exhibits S8 and 503-1 through 3 received
3 in evidence)

4 MR. MASTER: At this time I'd like to publish
5 Government Exhibit 503-1.

6 THE COURT: This is the English version?

7 MR. MASTER: Yes. It is the facing page. I would
8 request, Mr. Dinet, that you publish the first and second page
9 side by side.

10 Q. Do you recognize documents related to an account by the
11 name of Udino Investments?

12 A. Yes.

13 Q. Is that one of the account statements which you obtained by
14 MLAT, Mutual Legal Assistance Treaty?

15 A. That's correct.

16 Q. Who is the signatory on the Udino Investments account?

17 A. My recollection is that Joseph Saranello is the signatory
18 on all the accounts for which we did the MLAT.

19 MR. MASTER: If you could turn to I guess it would be
20 the third and fourth pages, Mr. Dinet. Can you zoom in on the
21 English language. This relates to Udino Investments account at
22 Capital Bank.

23 Now turn to 502-3, Mr. Dinet, if you wouldn't mind
24 doing the facing page. Actually, Mr. Dinet, if you wouldn't
25 mind going to what I guess would be the third and fourth pages

D3erlev5

Eastman - direct

1 of this document.

2 Q. Do you recognize these as statements of the Udino
3 investment account?

4 A. Yes.

5 Q. These are documents that you obtained through this Mutual
6 Legal Assistance Treaty from Capital Bank in Panama?

7 A. Yes, we did.

8 MR. MASTER: If you wouldn't mind zooming in, Mr.
9 Dinet, on a transaction that is reflected on this statement
10 25/09/2009 on the left-hand side in the middle of the page. It
11 says NCD PTO Comercio Exterio, and then in parens, P/O Date
12 Palm Capital in the amount of \$149,950.

13 Q. Do you see that reflected there?

14 A. Yes, I do. I see that reflected in the credit column.

15 MR. MASTER: If you wouldn't mind turning to the next
16 page, Mr. Dinet, where that is translated. That's translated
17 as "Credit Foreign Trade Department ordered by Date Palm
18 Capital Corp."

19 Q. Then 503-3, do you recognize that as another document that
20 you obtained from Capital Bank by MLAT?

21 A. Yes.

22 Q. That relates to what entity?

23 A. This entity is Bluefin Financial Group, Inc.

24 (Continued on next page)

D3ELLE6

Eastman - direct

1 BY MR. MASTER:

2 Q. And who is the signatory on the account?

3 A. Joseph Saranello.

4 Q. Now, you stated that Joseph Saranello offered to make
5 recordings of a number of individuals, correct?

6 A. Yes.

7 Q. And was one of the individuals who he offered to make
8 recordings of David Levy?

9 A. Yes, it was.

10 Q. And these have previously been stipulated into evidence,
11 but I just wanted to ask, how did you manage the process of the
12 recordings?

13 A. We provided Joseph Saranello or I provided Joseph Saranello
14 a digital recorder, which he took with him to Colorado. I was
15 in California. And he would make calls to individuals such as
16 Mr. Levy, and then he would email those calls to myself and
17 copy an IRS agent on them.

18 And approximately two to three times during that
19 process, he would send the recorder out to me. One time he
20 brought the recorder with him to a meeting. And I would
21 download the recorder onto my computer and I could compare the
22 actual original download off the digital recorder to the
23 ultimate email to me.

24 Q. To confirm they were authentic?

25 A. Yes.

D3ELLE6

Eastman - direct

1 Q. Now, in this preparation for your testimony today, did you
2 have the opportunity to listen to calls that are in evidence as
3 Government Exhibits 520, 521, and 525?

4 A. Yes, I did.

5 MR. MASTER: And, Mr. Dinet, if you wouldn't mind just
6 playing at the very beginning of call 520. 520. It's a call
7 on April 20, 2010, and I'm just going to ask if you recognize
8 voices on the call.

9 THE COURT: Do we have a call into the bull pen?

10 MS. COHEN: It's just loading, your Honor, it takes a
11 minute.

12 MR. SHARGEL: If it helps, I will stipulate it is
13 Mr. Levy's voice on the recording. We stipulated that in
14 evidence.

15 MR. MASTER: That's fine, your Honor, if there's a
16 delay.

17 Nothing further.

18 THE COURT: Mr. Shargel.

19 CROSS-EXAMINATION

20 BY MR. SHARGEL:

21 Q. Agent Eastman, you're here from California, right?

22 A. Yes, sir.

23 Q. That's where the middle district of California is where the
24 case against Mr. Saranello developed?

25 A. Central District of California.

D3ELLEV6

Eastman - cross

1 Q. I'm sorry. What did I say, middle? I mean central
2 district.

3 A. Yes, sir.

4 Q. So just so orient ourselves geographically, what's the
5 largest city in the central district?

6 A. Los Angeles is the largest city in the district, but the
7 case is out of Santa Anna, which is in Orange County,
8 California.

9 Q. I want to go back to something you said on direct
10 examination about the HSBC Bank. The question was in relation
11 to transactions between where, would you remind us?

12 A. Panama and the United States.

13 Q. And I believe the answer to the question was that at
14 present, at present, all such transactions go through HSBC in
15 New York.

16 A. That's my understanding, yes.

17 Q. Where did you get the understanding?

18 A. From looking at the records, through the --

19 Q. I'm sorry?

20 A. Through the MLAT, looking through the bank records.

21 Q. And you said in your direct testimony -- correct me if I'm
22 wrong -- that there was a time when not all of them went
23 through HSBC?

24 A. Well, when I said that, I'm also thinking about other bank
25 accounts that were down there, such as accounts maintained at

D3ELLE6

Eastman - cross

1 Multibank. They might have cleared through a different bank
2 than HSBC.

3 Q. Can you say with certainty that the transactions that
4 occurred with respect to Mr. Levy went through HSBC, can you
5 point to any document that tells us that with certainty?

6 A. If I had the documents in front of me, I could go through
7 each wire.

8 Q. So maybe that would be the redirect, so I'll just leave it
9 at that.

10 But you'd have to see the documents and you'd have to
11 look at the wires to see whether it went through New York at
12 all or HSBC, right?

13 A. Right. I'd want to look at the wires and make sure I'm
14 looking at the HSBC on there. But my understanding is from
15 looking at the records, they were going through HSBC with
16 Capital Bank. At one point Mr. Saranello moved from using
17 Multibank to Capital Bank, and I'm not sure about where
18 Multibank was clearing through.

19 Q. As you sit here now, you can't state with any degree of
20 certainty that it went through New York or HSBC Bank?

21 A. I would want to see the records.

22 Q. You would want to see the records to make certain, right?

23 A. Yes.

24 Q. So that leaves, if I may just repeat the question, that
25 leaves that right now it's uncertain --

D3ELLE6

Eastman - cross

1 A. Yes.

2 Q. -- fair point. You said mm-hmm?

3 A. Yes.

4 Q. Were you -- I should say are you the case agent on this
5 case?

6 A. I am one of the case agents on the Joseph Saranello case,
7 not the Levy case.

8 Q. You're not a New York agent?

9 A. No.

10 Q. You're a stranger in a distant land here?

11 A. Well, I used to work here.

12 Q. You're not a stranger but you're in a distant land.

13 You're a case agent on the Saranello case?

14 A. Yes.

15 Q. And that's why you were part of the search team when the
16 agents, number of agents went to his house on that March day in
17 2010?

18 A. That's correct. I was there.

19 Q. And as the case agent, did you continue to work with
20 Mr. Saranello during the period of his cooperation?

21 A. Yes, I did.

22 Q. I think you said on direct examination that he started to
23 cooperate with the government almost immediately, right?

24 A. That's correct.

25 Q. It was what, in March he started to cooperate with the

D3ELLE6

Eastman - cross

1 government, the same month that the search warrant was
2 executed?

3 A. I believe it was the end of March.

4 Q. And then the following March, I'm sorry, the following
5 month he started cooperating and there was a proffer session
6 that you attended, right?

7 A. I attended a proffer session. I'm not sure the exact date,
8 but I attended a proffer session with Mr. Saranello.

9 Q. You became aware that probably a week after the proffer
10 session, April 22, 2010, if that refreshes your recollection,
11 that Mr. Saranello entered into a cooperation agreement, right?

12 A. Yes.

13 Q. And you knew with any -- you've been an agent a long time,
14 an investigator a long time. You knew that like with any
15 cooperation agreement, he was agreeing that he would tell the
16 truth, right?

17 A. That's correct.

18 Q. And made promises that he wouldn't commit any more crimes
19 and wouldn't lie and so on and so forth?

20 A. That is true.

21 Q. But you since learned that even after he agreed to do that,
22 he lied to the agents, right, to agents?

23 A. I learned that very recently.

24 Q. Like last week or something, right?

25 A. That's correct.

D3ELLE6

Eastman - cross

1 MR. SHARGEL: No further questions.

2 THE COURT: Anything?

3 MR. MASTER: No, your Honor.

4 THE COURT: Mr. Eastman, thank you very much.

5 (Witness excused)

6 THE COURT: Next witness.

7 MR. MASTER: Government calls Joseph Saranello.

8 JOSEPH SARANELLO,

9 called as a witness by the Government,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MASTER:

13 THE COURT: Mr. Master, do you want to reclaim these
14 documents?

15 MR. MASTER: No, actually, Mr. Saranello is going to
16 be using them.

17 THE COURT: All right.

18 Q. Mr. Saranello, how old are you?

19 A. I'm 64 years old.

20 Q. What's your level of education?

21 A. I have a bachelor's degree and a law degree.

22 Q. Where did you grow up?

23 A. In Brooklyn, New York.

24 Q. Where did you go to high school?

25 A. In Stuyvesant High School.

D3ELLE6

Saranello - direct

1 Q. Where did you go to college?

2 A. At City University of New York.

3 Q. And where did you go to law school?

4 A. At the University of Texas.

5 Q. And after law school where did you practice?

6 A. In Houston, Texas.

7 Q. And did there come a time when you were disbarred?

8 A. Yes, I was.

9 Q. What were you disbarred for?

10 A. I had neglected approximately four cases and failed to keep
11 up with deadlines on those cases and they were dismissed for
12 want of prosecution and I was disbarred.

13 Q. After you were disbarred, what did you start doing for a
14 living?

15 A. I engaged in risk management consulting and the forming of
16 captive insurance companies.

17 Q. Can you just explain for the members of the jury what a
18 captive insurance company is?

19 A. It's basically an insurance company that's owned by the
20 people that are actually being insured and the -- so that they
21 take part of the risk and self-insure part of the risk and they
22 reinsure the catastrophic risk.

23 Q. And did there come a time when your work with captive
24 insurance companies took you down to Panama?

25 A. Yes, it did.

D3ELLE6

Saranello - direct

1 Q. And what's the reason for that?

2 A. Because of the favorable laws and tax treatment laws in
3 Panama.

4 Q. Concerning what?

5 A. Concerning captive insurance companies.

6 Q. And so did there come a time when you began traveling down
7 to Panama to set up captive insurance companies?

8 A. Yes, there was.

9 Q. And what kind of clients did you have when you were --
10 began setting up these captive insurance companies?

11 A. They were mostly small medical practices or locum tenens
12 practices who hired doctors on a temporary basis.

13 Q. What's a locum tenens basis?

14 A. A company that hires doctors to work in hospitals on a
15 temporary basis.

16 Q. Did there come a time when some of the doctors and dentists
17 who asked you to set up their locum tenens -- or, I'm sorry --
18 their captive insurance companies asked you to set up other
19 accounts for them?

20 A. Yes, they would. I was setting up some companies and bank
21 accounts for them.

22 Q. And what kind of companies?

23 A. They were basically shell companies. They had a name, an
24 address in Panama, and a registry agent in Panama.

25 Q. When you say shell company, what do you mean by shell

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Saranello - direct

1 company?

2 A. A company that had an address but no real assets and no
3 real business activity.

4 Q. And what was the purpose of setting up these shell
5 companies for these clients?

6 A. So that they could open up investment accounts or brokerage
7 accounts and also so that they could shelter assets of theirs
8 in the event of creditor judgments or divorce.

9 Q. In other words, they wanted to hide their money?

10 A. Yes.

11 Q. In Panama?

12 A. Yes.

13 Q. And --

14 MR. SHARGEL: I object to that question. I object to
15 the leading.

16 THE COURT: Overruled.

17 Q. And so what if any real activity did these companies engage
18 in that you set up?

19 A. No real activity in Panama.

20 Q. And so what would happen when funds would arrive in these
21 accounts that you set up in Panama?

22 A. The accounts, the funds would then be sent to -- they would
23 be used by the parties who had the accounts set up. They would
24 be wired to them or sent to them and/or the funds would sit in
25 the bank accounts until the parties wanted to use them.

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1 Q. And who was the actual signatory on the bank accounts that
2 you set up for these people?

3 A. In the early years, it was themselves. But later on, I
4 signed as the signatory on the bank accounts.

5 Q. And what if anything did you do to further -- well,
6 withdrawn.

7 What if any use did you make of Panamanian identities
8 to further your work for these people?

9 A. When I set up brokerage accounts in the United States, I
10 would present a passport photo of a Panamanian who would be the
11 nominee or the person on the account.

12 Q. Where did you get these identities?

13 A. I got them in Panama from other people that I knew.

14 Q. Did you pay for those identities?

15 A. Yes, I did.

16 Q. And what would you do when funds were received back in
17 Panama and your clients asked you to send money to another
18 location?

19 A. I would wire the funds over. The accounts all had internet
20 access, and I would wire the funds and keep notes as to the
21 funds that were wired and the amounts and the purpose.

22 Q. What if any fees did you charge for your services?

23 A. I charged \$5,000 to set up the accounts, and I charged
24 1 percent of the fees.

25 Q. 1 percent of the funds?

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1 A. Of the funds.

2 Q. And did there come a time when you began providing these
3 services for a different type of client other than doctors and
4 dentists?

5 A. Yes.

6 Q. And for whom did you begin providing these services?

7 A. I provided for people who wanted to set up penny stock
8 accounts, brokerage accounts in the U.S.

9 Q. And what types of services did you provide these people who
10 were involved in penny stocks?

11 A. I would set up the corporation in Panama and I would open
12 the bank account in the name of the corporation and then I
13 would open up a U.S. brokerage account for that corporate
14 entity.

15 Q. Where did you set up brokerage accounts?

16 A. I set the brokerage accounts up at various brokerage houses
17 in the U.S., such as Thomas Anthony, Orion, and Oppenheimer.

18 Q. And where if any offshore brokerage houses did you use?

19 A. I used Gibraltar Securities, and I used Moneyline brokers
20 in Costa Rica.

21 Q. Where is Gibraltar Securities located?

22 A. In the Bahamas.

23 Q. Whose names would appear as the founders of these shell
24 corporations that you would set up?

25 A. There would be corporate officers provided by the company

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1 or attorney that would file the corporate papers. And then on
2 the brokerage applications, I would substitute the name of a
3 Panamanian nominee to be on that brokerage account.

4 Q. That was one of the Panamanian nominees whose identities
5 you purchased?

6 A. Yes.

7 Q. And, again, whose names would you use on the Panamanian
8 bank accounts?

9 A. I would use my name on the Panamanian bank accounts.

10 Q. And how would you be able to use your name if other
11 identities were associated with the account?

12 A. I would receive a power of attorney signed by the corporate
13 officer.

14 Q. And how about if you needed to sign documents associated
15 with United States activities in the names of -- well,
16 associated with the identities you purchased, what would you
17 do?

18 A. I would just sign that person's name to the document.

19 Q. Using that identity?

20 A. Using that identity.

21 Q. And what did you come to understand about the purpose of
22 your work for these people who were involved in penny stocks?

23 A. That they were basically pumping up the price of the stock
24 very quickly through various kinds of promotions, through press
25 releases, information that wasn't accurate, designed to pump up

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1 the stock, and then they would quickly sell the stock.

2 MR. SREBNICK: Objection, your Honor.

3 THE COURT: Overruled.

4 MR. SREBNICK: Move to strike.

5 THE COURT: Denied.

6 Q. What would you do once the proceeds of that promotion were
7 generated?

8 A. I would request that the brokerage firm wire the funds to
9 the Panamanian bank account.

10 Q. And then what would you do with the funds once they were in
11 the Panamanian accounts?

12 A. I would wire them as per the instructions of the person who
13 had set up the account with me.

14 Q. In preparation for your testimony today, were you asked to
15 review your records to identify approximately how much money
16 you laundered for people involved in stock promotion?

17 A. Yes.

18 Q. And what would you estimate would be the amount that you
19 laundered?

20 A. I'd estimate about \$30 million.

21 Q. Now, there came a time when you were arrested, right, do
22 you remember that?

23 A. Yes.

24 Q. And prior to that a number of documents were seized from
25 your home; do you remember that?

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1 A. Yes.

2 Q. At the time the documents were seized from your home, were
3 you cooperating with the government?

4 A. At that time, no.

5 Q. And were you aware that the government was planning on
6 executing a search warrant at your home before the warrant was
7 executed?

8 A. No, I was not.

9 Q. After you were arrested, you began cooperating with the
10 government --

11 A. Yes.

12 Q. -- correct. And eventually you pleaded guilty to pursuant
13 to a cooperation agreement with the United States Attorney's
14 Office for the Central District of California, correct?

15 A. That's correct.

16 Q. I'm going to show you what's been marked as Government
17 Exhibit 3514-8. Do you recognize that document?

18 A. Yes, I do.

19 Q. What document is that?

20 A. That is the plea agreement that I entered into with the
21 government.

22 Q. That's with the United States Attorney's Office for the
23 Central District of California?

24 A. Yes.

25 Q. You were originally arrested for something having nothing

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1 to do with David Levy, correct?

2 A. That's correct.

3 Q. And it related, as described in Exhibit A to your
4 cooperation agreement, related to something called R-U-N-U, a
5 penny stock called Runu Nutrition?

6 A. Yes.

7 Q. What crime did you plead guilty to in this cooperation
8 agreement?

9 A. Conspiracy to commit wire fraud.

10 Q. And what was your understanding of what you're obligated to
11 do under this agreement with the United States Attorney's
12 Office in California?

13 A. To cooperate with the government, provide information
14 regarding any criminal activities, and to truthfully describe
15 information that I was aware of regarding any criminal
16 activities.

17 Q. And are you required to truthfully testify if called upon
18 by the government?

19 A. Yes.

20 Q. Were you required to provide truthful information about
21 criminal activity that you were involved in?

22 A. Yes.

23 Q. And are you allowed to commit any future crimes?

24 A. Yes.

25 Q. Are -- I'm sorry -- are you allowed to commit any future

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1 crimes?

2 A. No.

3 Q. And do you have to attend meetings and provide documents if
4 requested by the government?

5 A. Yes.

6 Q. Now, just taking a look at this agreement, you recognize
7 it, correct?

8 A. Yes, I do.

9 Q. And it's your signature on page 21 of the agreement,
10 correct?

11 A. Yes, it is.

12 Q. Now, as part of your cooperation, you were asked to
13 identify any bank accounts that you were aware of that had not
14 been seized by the government that were involved in your money
15 laundering activities; do you remember that?

16 A. Yes.

17 Q. And how many, well, how much money had not been seized that
18 you identified by through your cooperation?

19 A. There had been several million dollars that was seized by
20 the government.

21 Q. And was that in part as a result of your cooperation?

22 A. Yes.

23 Q. But, Mr. Saranello, was there another account that you
24 maintained that you did not tell the government about?

25 A. Yes, there was.

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1 Q. How much money was in that account?

2 A. There was approximately \$125,000 in that account.

3 Q. And when did you establish that account, Mr. Saranello?

4 A. That had been established around 2009.

5 Q. Where was it established?

6 A. It was in Panama.

7 Q. And what was the source of the funds in that account?

8 A. Those were funds that I had earned over the course of time
9 in Panama and also funds that I had earned from money
10 laundering.

11 Q. And you understood the work you were doing for these
12 individuals who were involved in stock promotion was money
13 laundering?

14 A. Yes.

15 Q. And why did you understand that you were helping launder
16 money?

17 A. Because the proceeds that the -- the proceeds of the stock
18 sales was obtained through stock fraud and then the funds were
19 then wired into Panama and then distributed to other
20 individuals.

21 Q. And you maintained shell companies for what purpose?

22 A. For the purpose of laundering those funds, for sending them
23 from other companies that weren't related to companies that had
24 brokerage accounts always.

25 Q. And you understood that one of the purpose of what you did

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1 was to hide the origin of those funds?

2 A. Yes.

3 Q. And to hide the ownership of the funds?

4 A. Yes.

5 Q. And to hide who was controlling the funds?

6 A. Yes.

7 Q. Now, let's get back to that bank account that you didn't
8 tell the government about. How much money was it again?

9 A. Approximately 125, \$126,000.

10 Q. And you testified just a moment ago that it contained a
11 mixture of legitimately earned funds and funds from illegal
12 activities, correct?

13 A. Yes, that's correct.

14 Q. Do you have any documentation as to where, which of the
15 funds were earned from legitimate activities and which were
16 earned from money laundering?

17 A. No, I do not.

18 Q. And just describe for the jury why you held back that one
19 account?

20 A. I was wrong to hold it back. I don't have a reason for
21 holding back on and not disclosing it, but that was wrong to
22 do.

23 Q. Well, what did you use the money for?

24 A. When I received the funds, I used it for living expenses.

25 Q. And what had happened to your main source of income after

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1 your arrest?

2 A. Money was frozen, most nearly all of my funds were frozen,
3 so it was difficult to kind of get on my feet again and it took
4 me a little while to do that.

5 Q. And you used these illegal funds to get back on your feet,
6 you said?

7 A. Yes.

8 Q. And you had handling agents, correct?

9 A. That's true.

10 Q. And by that I mean agents who you checked in with every
11 day?

12 A. Yes.

13 Q. And was Jeffrey Eastman one of those agents?

14 A. Yes.

15 Q. And, again, you stated you told Jeffrey Eastman about
16 millions of dollars in funds that were in Panama, correct?

17 A. That's correct, and also in the United States.

18 Q. But you didn't tell him about the \$125,000?

19 A. That's correct.

20 Q. And you didn't tell anyone in the government about it until
21 it had been spent, correct?

22 A. That's correct.

23 Q. And how did the government find out about the account?

24 MR. SHARGEL: If he knows. Objection, if he knows.

25 A. I believe it was a report filed by the bank with the

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1 government.

2 Q. What bank did you use to receive these funds from Panama?

3 A. Colorado Business Bank.

4 Q. And in preparation for trial, this office, the United
5 States Attorney's Office in New York, asked you whether you had
6 a Panamanian bank account, correct?

7 A. Yes.

8 Q. And that was just a few weeks ago, correct?

9 A. Yes.

10 Q. And what did you do when you were first asked about it?

11 A. I was asked about the Colorado business account and the
12 explanation that I gave for the account was not correct.

13 Q. It was false?

14 A. It was false.

15 Q. And you stated to the government here that the funds were
16 earned from captive insurance work; do you remember that?

17 A. Yes, I do.

18 Q. And you maintained that story for two days; do you remember
19 that?

20 A. Yes, that's correct.

21 Q. And you had a description of how the funds were earned
22 legitimately; do you remember that?

23 A. Yes, I do.

24 Q. And you maintained that for two days until what happened?

25 A. I told -- I then told the government the truth about the

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1 funds, that how they were obtained and that the information
2 about the captive earning for those funds was not true.

3 Q. And that was only after the government confronted you and
4 asked you, directed you to call the individual who you said had
5 set up this captive insurance company in the government's
6 presence, correct?

7 A. That's correct.

8 Q. And you couldn't do that, correct?

9 A. That's correct.

10 Q. Because?

11 A. There was no such.

12 Q. There was no such thing?

13 A. Yes, that's correct.

14 Q. What is now the status of your cooperation agreement?

15 A. The government has the option to void that cooperation
16 agreement.

17 Q. Have they told you yet whether they're going to exercise
18 that option?

19 A. No, they have not.

20 Q. What have you been told about what needs to happen before
21 the government decides whether or not to maintain your
22 cooperation agreement?

23 A. I need to continue to cooperate as requested by the
24 government.

25 Q. And what has to happen before the government is able to

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1 evaluate whether to keep your cooperation agreement?

2 A. I need to testify truthfully in any proceedings that the
3 government requests that I do so.

4 Q. And have you been told that the government needs to conduct
5 further investigation and further interviews with you?

6 A. Yes.

7 Q. And so you're testifying here today under the cooperation
8 agreement, correct?

9 A. That's correct.

10 Q. But as you sit here today, you don't know whether or not
11 the government is going to agree to be bound by the agreement,
12 correct?

13 A. That's correct, yes.

14 Q. What are you hoping will happen?

15 A. I'm hoping that the government will abide by the agreement.

16 Q. Have any promises been made to you in any regard with
17 respect to that cooperation agreement?

18 A. No, they have not.

19 Q. Now, if the cooperation agreement is not voided because of
20 you held back and lied about the \$125,000, what will the
21 government agree to do for you?

22 A. If it's not voided, then the government could choose to at
23 my sentencing write a letter requesting a departure from the
24 level of guideline that I would be sentenced at.

25 Q. Is that called a 5K letter?

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1 A. Yes.

2 Q. And that would -- well, what could happen to your sentence
3 if a 5K letter is written?

4 A. The sentence could be lower than under the current
5 guideline level.

6 Q. Does it have to be lower?

7 A. No.

8 Q. Who decides your sentence?

9 A. The judge.

10 Q. And have you been sentenced yet for the crime that you
11 pleaded guilty to?

12 A. No, I have not.

13 Q. And in the Central District of California, you negotiated
14 an agreement capping the potential sentence that you would face
15 under the agreement as five years, correct?

16 A. That's correct.

17 Q. If the agreement is voided, do you still get that benefit?

18 A. No.

19 Q. And under the agreement, you were required to become
20 current on your taxes by the time of your sentencing; do you
21 remember that?

22 A. Yes.

23 Q. Have you become current on your taxes yet?

24 A. Not yet, I have not become current. I've paid estimated
25 taxes, but I have not yet become current on my taxes.

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1 Q. Do you know yet when you're going to be sentenced?

2 A. December 9.

3 Q. Of which year?

4 A. Of this year.

5 Q. Do you know is that a firm date or could the date change?

6 A. That date could be moved earlier or later. It's up to the
7 government.

8 Q. So have any promises at all been made to you about your
9 sentence by anyone?

10 A. No, they have not.

11 Q. Why did you enter into the cooperation agreement with the
12 government in the first place?

13 A. In the hopes that I would receive as low a sentence as
14 possible.

15 Q. So now let's get back to what you did for a living before
16 you were arrested.

17 I'd like to direct your attention to the middle of
18 2009. At the time, who were your primary clients?

19 A. They were penny stock promoters.

20 Q. And what record if any did you -- withdrawn.

21 What records if any did you maintain concerning these
22 shell company bank accounts that you maintained in Panama?

23 A. I maintained records of wires that I sent out and I
24 maintained some ledgers of the bank account balances, as well
25 as copies of wire confirmations.

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1 Q. I'm going to show you what's been marked and previously
2 admitted as Government Exhibit 500-1.

3 Do you recognize Government Exhibit 500-1? And if you
4 wouldn't mind turning to the second page.

5 A. Yes.

6 Q. What is Government Exhibit 500-1?

7 A. It's a listing of various shell companies and their
8 balances that I had set up in Panama.

9 Q. And so was Bluefin Financial Group one of the shell
10 companies that you had set up?

11 A. Yes, it was.

12 Q. And how about Udino Investments, is that another shell
13 company that you had set up?

14 A. Yes, it was.

15 Q. In fact, each of these, what are each of these?

16 A. Each of these are shell companies that I had set up, and
17 some of which had brokerage accounts and some not.

18 Q. And there are balances listed. Do you see the balance
19 totals?

20 A. Yes.

21 Q. And those are balances in those accounts?

22 A. Yes, they were.

23 Q. What are the two primary banks that you used?

24 A. It was Capital Bank and Multibank.

25 THE COURT: What bank?

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1 THE WITNESS: Multibank in Panama.

2 Q. Where in Panama?

3 A. In Panama City, Panama.

4 Q. And now if you wouldn't mind turning to Government
5 Exhibit 500-2, what is depicted in Government Exhibit 500-2?

6 A. That's a brokerage account application for Udino
7 Investments.

8 Q. And what is Udino Investments again?

9 A. It was one of the shell companies that I set up in Panama.

10 Q. And if you wouldn't mind turning to page 2, there's a
11 signature on the bottom, Frederico Rodriguez Romero?

12 A. Yes.

13 Q. Who is Frederico Rodriguez Romero?

14 A. That is one of the persons whose passport photo ID I
15 purchased and I used -- that's my signature -- and used that
16 name to establish the account.

17 Q. And so that's your signature?

18 A. Yes.

19 Q. About how many shell corporations did you maintain in
20 Panama?

21 A. Approximately some 12 to 15.

22 Q. And about how many bank accounts did you maintain through
23 these shell corporations?

24 A. Each corporation had a bank account.

25 Q. And did you maintain funds in each of those bank accounts?

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1 A. Yes.

2 Q. Now, who is Scott Gelbard?

3 A. He is one of the penny stock promoters who I set up
4 accounts for and brokerage accounts for, both bank accounts,
5 corporations, and brokerage accounts.

6 Q. Did there come a time when he said he wanted to introduce
7 you to David Levy?

8 A. Yes.

9 Q. When was that?

10 A. Approximately May of 2009.

11 Q. And what did you agree to do?

12 A. I agreed to fly to California and meet with Scott and David
13 Levy.

14 Q. And where did you meet?

15 A. We met in the lobby of a hotel in Beverly Hills,
16 California.

17 Q. Who was at the meeting?

18 A. At the meeting was Scott Gelbard, David Levy, Ted Dudley
19 and myself.

20 Q. And had you previously engaged in penny stock fraud and
21 money laundering activities with Scott Gelbard?

22 A. Yes, I had.

23 Q. And had you previously engaged in penny stock fraud and
24 money laundering activities with Ted Dudley?

25 A. Yes, I had.

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Saranello - direct

1 Q. When if ever had you met David Levy before?

2 A. That was the first time I met David Levy.

3 Q. And at the meeting, what if anything did you tell David
4 about what you did?

5 A. I told David that I set up corporations and bank accounts
6 in Panama, and also that I set up brokerage accounts in the
7 United States for those Panamanian companies.

8 Q. And what if anything did David say that he did?

9 A. David said that he was involved in promoting and pumping up
10 prices of small microcap stocks and selling them quickly to
11 make large profits.

12 Q. And what did he say, what if anything did he say he needed
13 your help doing?

14 A. He wanted to set up accounts, an account for himself in
15 Panama that would be his own personal account in the name of
16 Panamanian corporation.

17 Q. What did he say he wanted to set up that account for?

18 A. Because he wanted to -- he was going to be working on some
19 stock deals with Scott Gelbard and he wanted to have an account
20 where once the proceeds of the accounts, the stock sales came
21 into the bank, he could move it without having to wire funds
22 into his own account.

23 Q. And what else if anything did David ask of you concerning
24 these upcoming deals?

25 A. David asked me to provide him with the names of two

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1 corporate entities that had not yet been used much and I did.

2 Q. Used much for what?

3 A. For stock promotions and for stock sales.

4 Q. And what did he say he wanted those corporate entities for?

5 A. He was going to be doing some deals with Scott Gelbard and
6 he wanted to have these corporate entities to use for those
7 deals.

8 Q. At the time did he identify the name of the entity
9 concerning which he needed these Panamanian identities or
10 Panamanian corporate identities?

11 A. No, he did not at that meeting.

12 Q. Later?

13 A. Yes.

14 Q. Did you come to have a conversation with David Levy where
15 he gave a name of the deal that he wanted to use these
16 Panamanian identities to facilitate?

17 A. Yes. He told me it was Cool-n-Save.

18 Q. Do you know anything about any company associated with
19 Cool-n-Save?

20 A. Not really other than Levy also mentioned that Greenway
21 Design was a sort of precursor to Cool-n-Save. But other than
22 that, I didn't know much about what those companies did.

23 Q. And so what if anything did you agree to do in response to
24 his requests?

25 A. I agreed to provide him with the names, which I did Bluefin

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1 Financial Group and Copperwood Foundation, to set up to hold
2 stock that would come into as part of the deal. And I told him
3 that I had these corporate accounts, bank accounts set up, as
4 well as brokerage accounts set up, and I would -- and the bank
5 accounts were already at Capital Bank.

6 Q. And these are shell companies that you previously set up?

7 A. Yes.

8 Q. And who is the signatory on the Bluefin Financial Group and
9 Copperwood Foundation accounts?

10 A. I was.

11 Q. Now, what about the request that you set up a corporation
12 in Panama and a Panamanian bank account in the name of that
13 corporation?

14 A. At the meeting I told him that I would do that and that he
15 would need to meet with me in Panama. And he said that as soon
16 as the corporation was set up, he would go ahead and meet me in
17 Panama. I told him I also needed the name of the corporation
18 that he wanted me to use.

19 Q. And following the meeting, did there come a time when he
20 gave you the name of a corporation?

21 A. Right. He gave me the name of the corporation that he
22 wanted to use called Sadhana Enterprises Inc. And he wired
23 \$5,000 to me as the fee for me to go ahead and have the
24 corporation formed and set up.

25 THE COURT: How are you spelling the name?

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1 THE WITNESS: S-A-D-H-A-N-A Enterprises Inc.

2 MR. MASTER: Mr. Dinet, if you could just publish
3 Government Exhibit 500-10.

4 Q. This is a document that was found in your house at the
5 execution of the search warrant?

6 A. Yes.

7 Q. And what does this letter relate to?

8 A. This letter relates to -- it's a commercial letter of
9 reference that on -- for David that the bank was requesting
10 that he provide the bank. In our meeting at the bank in
11 December, the bank said the account had still not been opened
12 and some additional information was needed, one of them being a
13 commercial reference letter. And David asked me if I would
14 provide one for him and so I did and then sent that off to the
15 bank.

16 Q. And so that's what -- the David Levy who's referenced in
17 this letter is the same David Levy who you met in May of 2009,
18 correct?

19 A. That's correct.

20 Q. Do you see David Levy in the courtroom today?

21 A. Yes, I do.

22 Q. Can you just point him out and identify him by an article
23 of clothing?

24 A. He's over at that back table.

25 MR. MASTER: Let the record reflect that the witness

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1 has identified David Levy.

2 THE COURT: Yes.

3 MR. MASTER: You can take that off the screen,
4 Mr. Dinet.

5 Q. Now, after he gave you the name Sadhana Enterprises, did
6 there come a time when you requested that he pay your \$5,000
7 fee?

8 A. Yes.

9 Q. And where did you have him send the money to?

10 A. He wired it to the United National account in Panama at
11 Capital Bank.

12 Q. And United National is one of the shell companies that you
13 maintained?

14 A. Yes.

15 Q. And do you remember receiving the \$5,000 into your United
16 National account?

17 A. Yes, I do.

18 Q. Where do you maintain that account?

19 A. At Capital Bank in Panama.

20 Q. And, by the way, all accounts at Capital Bank clear
21 through --

22 MR. MASTER: Well, Mr. Dinet, if you wouldn't mind
23 pulling up Government Exhibit 500-6.

24 Q. This is a document that was found in your home at the time
25 of the search; do you remember that?

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1 A. Yes.

2 Q. And do you remember that's information that was obtained
3 from Capital Bank, correct?

4 A. Yes. That's the wiring instructions for sending a wire to
5 Capital Bank. All of the wires to Capital Bank go through HSBC
6 Bank in New York, New York.

7 Q. And that's information that is from Capital Bank, correct?

8 A. Yes.

9 Q. And that you maintained to facilitate your money laundering
10 activities, correct?

11 A. Yes.

12 Q. And all wires would clear through this corresponding bank
13 account at HSBC?

14 A. Yes, all U.S. dollar wires.

15 Q. And then once they arrived in Panama from this bank account
16 in New York, New York, what would happen?

17 A. I would be able to confirm their receipt by checking the
18 account on the internet.

19 Q. And did you in fact confirm that this \$5,000 had been
20 received from David Levy into your United National shell
21 company bank account at Capital Bank?

22 A. Yes.

23 Q. And what did you do once the funds were received?

24 A. I went ahead and started the steps to have the corporation
25 formed and the corporation was formed. And then I spoke with

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Saranello - direct

1 David to set up a date for him to meet me in Panama City.

2 THE COURT: Mr. Master, would this be a convenient
3 place to break?

4 MR. MASTER: This would be fine.

5 THE COURT: Good night.

6 (Continued on next page)

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1 (Jury not present)

2 THE COURT: You can step down.

3 (Witness not present)

4 THE COURT: The schedule tomorrow is, what do you
5 think the schedule is?

6 MS. COHEN: Your Honor, I think Mr. Saranello has
7 about -- we're going to play the tapes, so we probably have
8 another 45 minutes or more.

9 THE COURT: Another hour.

10 MS. COHEN: Two hours more on direct, and however long
11 on cross.

12 MR. SHARGEL: Hour.

13 MR. MASTER: And then we're going to put Agent
14 Reinhardt on for about an hour tops.

15 MR. SHARGEL: Before we here that Agent Reinhardt, I
16 have an objection to an exhibit that he's going to use and
17 presumably his testimony as well.

18 THE COURT: Do you want to take it up now?

19 MR. SHARGEL: I'm happy to. I don't have it here
20 though. We received it last night, but I'm sure I can get
21 another copy or two.

22 THE COURT: Do you want to do it first thing tomorrow
23 morning?

24 MR. MASTER: If we can hear the nature of the
25 objection.

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1 MR. SHARGEL: The nature of the objection is that
2 Agent Reinhardt is being called as a summary agent, and the
3 information that I saw late last evening was really a
4 compilation of all the money that the Levys had in their
5 possession or that went through their hands.

6 And this is a continued objection where we had a trial
7 where they opened on wealth, where they elicited from every
8 witness that met Mr. Levy in connection with financing about
9 his cars and his wealth. And to put up numbers like
10 \$21 million, I don't see what the relevance is.

11 But if there is any relevance, the relevance is very
12 low compared to the substantial prejudice that I think that
13 completely outweighs the probative value. The probative value,
14 if it exists at all, and I don't concede that it exists, but if
15 it does exist, it's extremely low. It's not really making a
16 point. It's not under Rule 401 making it more likely that this
17 offense was committed. I know it's a low threshold. But,
18 again, I don't think it's relevant. But under a 403 balancing
19 test, I think it should be excluded.

20 THE COURT: Is there any amount of money -- what if he
21 was able to segregate the amount of money that was with the
22 companies that are in issue here?

23 MR. SHARGEL: I don't know. I didn't do the math.
24 Maybe we can do that in anticipation of our meeting again
25 tomorrow morning. But to see staggering numbers like

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1 \$21 million going into the accounts and the various accounts
2 that they controlled, what does it prove? It's as simple as
3 that. What does it prove? But it has the potential for
4 prejudicing the Levys and in front of the jury and I think it
5 should be excluded. I think any fair 403 balancing test should
6 result in its exclusion.

7 THE COURT: You want to give me a preview of your
8 response, Mr. Master, Ms. Cohen?

9 MR. MASTER: Yes, your Honor. We previously briefed
10 the issue and Mr. Shargel lost on and the Court ruled for the
11 government on the issue of introducing evidence of funds that
12 they received.

13 THE COURT: I ruled on cars and lifestyle means and
14 method.

15 MR. MASTER: Correct, your Honor.

16 THE COURT: I didn't rule on \$21 million. This is the
17 first I'm hearing of this.

18 MR. MASTER: Well, \$21 million doesn't come from
19 anywhere other than the bank records that are already in
20 evidence by stipulation of the parties. And they're voluminous
21 records. They're summary records that the government, through
22 summary witness, they're voluminous records. The government
23 simply added up the funds that came into the account and the
24 funds that went out of the accounts.

25 MR. SHARGEL: The Stahl case, I know it's 1980, a long

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1 time ago, but it's still good law. And in the context of
2 Stahl, when I think back to the prosecutors in that case saying
3 fancy offices on Park Avenue, seems very similar to fancy
4 Bentleys in the driveway and buses. But you did rule on that
5 and I respect that. Of course we respect the ruling, but this
6 is just over the top. I just ask you to look at it tomorrow.

7 THE COURT: I will.

8 MR. SHARGEL: Seeing it is much more dazzling.

9 THE COURT: I'm not easily dazzled, but I'll take a
10 look.

11 MR. MASTER: Your Honor, just to briefly reply, it's
12 not over the top. It's their records that are simply being
13 summarized, their proceeds from stock fraud, from the ongoing
14 charged conspiracies. The funds are used to pay coconspirators
15 and to facilitate the scheme.

16 THE COURT: OK. Here's what I want to ask. I'll
17 think about this and I'll take it up tomorrow morning. I'll be
18 here early.

19 How much time are you going to need for closings?

20 MR. SHARGEL: I would say 90 minutes.

21 MS. COHEN: I'd say the government would need about
22 two hours, your Honor.

23 THE COURT: Mr. Srebnick.

24 MR. SREBNICK: I think the 90 minutes sounds good.

25 THE COURT: In light of the schedule, are you going to

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1 be able to get your case on tomorrow?

2 MR. SREBNICK: Oh, yes.

3 MR. SHARGEL: And I have a case tomorrow I'll get on
4 as well in very short time.

5 MR. SREBNICK: We have reached stipulations on
6 documents that will obviate the need for the witness, so that's
7 going to save time.

8 MS. COHEN: Your Honor, if I can just ask the defense,
9 are you going to have to call a witness?

10 MR. SHARGEL: I'm going to have a little witness.

11 MS. COHEN: OK.

12 THE COURT: A little witness.

13 MS. COHEN: Tell us who it is?

14 THE COURT: You mean a short witness?

15 MR. MASTER: Short or little?

16 THE COURT: OK.

17 MR. SHARGEL: Ms. Hays will be my witness, seriously.

18 MS. COHEN: Thank you.

19 THE COURT: Do we need an all day conference on the
20 jury charge? Is there any possibility of doing, starting the
21 summations on Monday?

22 MR. SHARGEL: Well, this, as I said, is a complicated
23 record, complicated issues. I'd rather brief it fully. As I
24 said, we're working as hard as we possibly can. And I
25 respectfully ask to stay with that generous -- maybe it's later

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1 in the day now, but the generous schedule later on.

2 THE COURT: So would we be able to get all the closing
3 in on Tuesday?

4 MR. SHARGEL: Yes, I believe so.

5 THE COURT: Mr. Srebnick, do you think so?

6 MR. SREBNICK: I heard five hours total of closings is
7 what I heard. Two plus three is five is what I heard.

8 THE COURT: Is that right? You want to Georgetown.

9 MR. SREBNICK: For law school. I went to Penn
10 undergrad. They have a pretty good math department, but I was
11 only a math major for first semester.

12 MR. MASTER: Should be enough to charge, do the
13 summations and to charge.

14 MR. SHARGEL: No, wait a minute. Not going to be able
15 to do that.

16 MS. COHEN: Not going to be able to charge and do the
17 closings.

18 MR. SHARGEL: With Mr. Srebnick's math skills, he left
19 out rebuttal.

20 THE COURT: All right. We'll plan on summations on
21 Tuesday and charge the jury on Wednesday.

22 We'll let the jury know on Monday they have a day off?

23 MR. SHARGEL: I'm sure they'll welcome that.

24 THE COURT: Yeah, right. And it will be in their
25 hands by Wednesday?

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1 MR. SHARGEL: Yes, sir.

2 MS. COHEN: Your Honor, if I can ask, if we can see
3 how the day goes tomorrow. I don't want to tell the jury
4 they're off and something comes up.

5 THE COURT: I'll tell them at the end of the day.
6 We'll know by the end of the day, right?

7 MR. MASTER: Yes, your Honor.

8 THE COURT: Thanks very much.

9 (Adjourned to March 15, 2013, at 10 a.m.)

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